

Vol. III

TRANSCRIPT OF RECORD

OCTOBER TERM, 1938

No. 15

WAIALUA AGRICULTURAL COMPANY, LIMITED,
PETITIONER.

U.S.

ELIZA B. P. CHRISTIAN, AN INCOMPETENT PERSON, BY HERMAN V. VON HOLT, HER GUARDIAN, ET AL.

No. 17

ELIZA R. P. CHRISTIAN, AN INCOMPETENT PERSON, BY HERMAN V. VON HOLT, HER GUARDIAN, PETITIONER.

U.S.

WAIALUA AGRICULTURAL COMPANY, LIMITED

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED

{	MARCH 30, 1938.
	MARCH 31, 1938.

CERTIORARI GRANTED MAY 2, 1938.

No. 8329.

United States
Circuit Court of Appeals

For the Ninth Circuit.

ELIZA R. P. CHRISTIAN, an incompetent person by
HERMAN V. VON HOLT, her guardian,
Appellant,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED, an
Hawaiian corporation, **JAMES L. HOLT**, and **ANNIE**
HOLT KENTWELL,
Appellees.

WAIALUA AGRICULTURAL COMPANY, LIMITED, an
Hawaiian corporation,
Cross-Appellant,

vs.

ELIZA R. P. CHRISTIAN, an incompetent person, by **HER-**
MAN V. VON HOLT, her guardian, **JAMES L. HOLT**
and **ANNIE HOLT KENTWELL**,
Cross-Appellees.

Transcript of Record

In Three Volumes

VOLUME III

Pages 1033 to 1581

Upon Appeal and Cross-Appeal From the Supreme Court
of the Territory of Hawaii.

(Testimony of Mrs. A. S. Riis.)

would never answer when spoken to, but would only shake her head. I never saw anyone else try to speak to her, and when I first knew her she was a small child.

GEORGE A. MACKENZIE

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am the husband of Mrs. Eliza Mackenzie. I have lived in the Territory for a great many years. I knew Eliza Holt when she was Eliza Christian and living at Waikiki with the Kentwells. I would visit there perhaps two or three times a month, on social calls and to have a drink with John D. Holt. I observed Eliza about the place but no one paid any attention to her. She was merely a member of the family and was the sort of person no one paid any attention to. She was not able to carry on a rational conversation. There were two ways of describing her: one "lolo" and one "ihepa," and I myself would call her "ihepa," meaning one having no control, no idea, one whose receptive powers were very limited. She was a grown girl at the time I knew her and could take care of herself, although I never saw her undress or anything like that.

(Testimony of George A. Mackenzie.)

Cross Examination.

The time referred to would be a period of nearly two years,—part of 1905, 1906, and perhaps a little of 1907. We often had meals at the Kentwell home. My wife was very friendly with the Kentwells. Eliza's father sometimes talked to her in English and sometimes in Hawaiian, and she would answer as the case might be. I paid no attention to any conversations between her, her father, or the Kentwells.

Re-direct Examination.

Old John D. Holt drank quite a bit. His allowance was a "Squareface" a day. I sometimes saw Eliza take some of the table stuff off of the table and Mrs. Kentwell doing the same thing.

MRS. HELEN CUSHINGHAM

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am the widow of James R. Holt, Jr., son of Owen J. Holt, having been married to him in 1886. After my marriage I went to Makaha to live and stayed there for some thirteen years. At this time John D. Holt was likewise living at Makaha with his daughters Eliza and his wife Kaahanui. When I first went there Eliza was but an infant. Our homes were then a short distance from each other.

(Testimony of Mrs. Helen Cushingham.)

Eliza was probably four or five years of age when she stopped living at Makaha and came to Honolulu. Relations between the families there were very friendly. I had little children of my own, Eliza being two or three years older than my eldest child. No schools were available there except the plantation school, which was about three miles away, so rather than send my children to the public school, I taught them at home about five days a week, Saturdays and Sundays excluded, until they were able to be sent to town to school. Among my pupils was Eliza and also a little girl brought up by Mrs. Cushingham, named Kaleiwaheo, now Mrs. Gomes. After Eliza lost her mother the Holts moved back to Makaha, and when I undertook to teach Eliza she was able to do nothing. Eliza was then about nine years of age. I tried to teach her the alphabet and numbers and found that she was a hopeless case. She was never able to learn her alphabet and was able to learn absolutely nothing about numbers. The few months that Eliza was there were the months I was trying to teach her. I can not state positively how long this was, as I didn't pay much attention or take much interest.

After the family moved back to town I lost sight of them and took more interest in my own children. I had no difficulty in teaching them. So far as Eliza was concerned, her father attended to the details of her physical cleanliness, while I used to sew dresses for her as I did for my own children, knowing that Eliza was motherless. She was not able

(Testimony of Mrs. Helen Cushingham.)

to do any sewing herself, being a very unnatural child. She would not play like the other children, but would roam around by herself. When I endeavored to talk to her, Eliza would give very short answers, such as "yes" or "no", and she was unable to carry on a sensible or rational conversation. After Eliza left Makaha I saw her from time to time in Honolulu, and remembered her at about the time that she had trouble in connection with having an illegitimate child. In all the time I knew her, up until the time that Eliza left Honolulu, there was no change whatever in her condition.

I remember the Hall case, and remember seeing Eliza at about the time of the trial at the police station, having driven down there with my mother-in-law. Mr. Kinney, the lawyer for Eliza, saw me and spoke to me. Eliza came to me and said, "Aunt Helen," to which I replied, "Yes, Eliza"; whereupon she said, "Father say if I be good girl he buy bicycle." She seemed to have no realization at all of the significance, of what she was doing at the police station.

Eliza could not learn to add or subtract. During all the time I knew Eliza I never heard her carry on a sensible or rational conversation with anyone. From my observation of Eliza during all those years I would describe her condition as that of a simpleton. I am familiar with the Hawaiian word "ihepa," and that is what the Hawaiians would call her. The only way in which she could be induced to do little things was the following: she was very fond of

(Testimony of Mrs. Helen Cushingham.)

sweet corn and would eat it whenever the family had it; if she would refuse to go into a corner and study, I would tell her that she could not have any sweet corn for lunch, whereupon she would put up her arm.

Cross Examination.

I did not take much interest in Eliza after the family moved to Honolulu, but I knew her very well. I have no idea of her age when she came to town, but she might have been around four or five. It might have been a month that I attempted to teach Eliza at Makaha, perhaps more, but I gave her up as a hopeless case. I sold some property to the Waialua Company, and there was ill feeling about it because I was almost forced to do it. When Eliza came to me for the classes she sometimes came with her father, sometimes alone. Eliza did not attend every day, sometimes missing a day or two. I paid little attention to her because I felt that if she came it was all right, I would have her in school, and if she did not come it would be immaterial. I remember distinctly endeavoring to teach her. Eliza did not play with other children nor did she play with little children. I myself attempted to have a rational conversation with Eliza while sitting in her own house, but one could not hold any conversation with her, it being just "yes" or "no" or other short answers.

JOHN D. HOLT, JR.

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have been a truant officer in the court of Domestic Relations for a little over ten years. I am a grandson of Owen J. Holt and a cousin of Eliza. In connection with my office of truant officer I have been familiar with work having to do with the examination of persons of feeble mind and with the commitment of such persons to the feeble-minded home, such familiarity having been acquired during the past six or eight years. I think I know the distinction between the words "insane" and "feeble-minded"; I have attended examinations conducted by the authorities in determining the measure of mentality of persons supposed to be feeble-minded, and although I have never attended the meetings, I have read their reports on bringing them back to the office, and am familiar with the general character of the patients so examined from reading the reports. In connection with feeble-mindedness, I have attended some forty meetings conducted by a Dr. Merrill, brought down by social workers in Honolulu, in which lectures were explained the tests for feeble-minded persons and illustrations given by the lecturer for determining the mental age of patients.

I knew Eliza Holt and was born in the same year as she, since childhood knowing also her father, my great-uncle, well. My remembrance of Eliza began

(Testimony of John D. Holt, Jr.)

in 1892 or 1893. As a little girl I saw Eliza at various places in Honolulu and at my grandmother's, at her own place, and at the Kentwell's. I remember her up until the time that she left with the Kentwells for England. From my observation of the girl over the period of years that I knew her; I should say that she was a feeble-minded child, or an imbecile. This description would apply to her when she reached maturity, and on the day that I told her goodbye in 1906 she was no different. I am familiar with the Hawaiian terms "ihepa" and "lolo," and "ihepa" would be the proper word to describe Eliza's condition. In all the time I knew Eliza Holt, I never heard her carry on a sensible and rational conversation with anyone. She could not read a newspaper, nor could she write, though there were newspapers around the house where she was living. (In answer to a question put by the court as to the witness's understanding of the Hawaiian word "ihepa," he replied that it was "feeble-minded," and that this was the only meaning that he had ever heard ascribed to it.)

Cross Examination.

I do not remember what school Eliza was going to when I first knew her but she went to school for one year with my aunts, Elizabeth Holt and Annie Kentwell. I did know that she went to school for about eight months at the Priory and five or six years at the Sacred Hearts School, having learned this from one of the Sisters. I talked to her several

(Testimony of John D. Holt, Jr.)

times when she was with my grandmother. She was then living around, according to my impression, with various relatives. As a cousin, I went out with her. I visited the Kentwell home occasionally when Eliza was there, sometimes having lunch there. I do not remember ever seeing her do any work there; though she was sometimes put to work and told to do it, she would do it very badly in an awkward and sulky way. This was about 1904 and was after her marriage to Christian.

Eliza had one cross eye. I have never heard Hawaiians describe a person with such a physical defect as being "ihepa"; a crossed eye was called by them "makaka." I have seen Eliza pick up a newspaper and look at it, and upon my asking her what she had seen, she would not say; I asked her and she did not know. I would ask her what she was doing, reading, when I saw her try to read, and she would say in a funny way—giggling way—"I don't know." I have attempted to have rational conversations with her, but it was useless. I have never heard her sing or hum, nor known her to go in swimming. It was a hard job to get her to take a bath; my aunt would try, and had to force her. In my opinion Eliza would not be capable of asking her father for a gold chain for her baby. I have never seen her dance or play a musical instrument. I have never told her to do something and observed whether or not she did it.

DAVID KALAUOKALANI

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I was clerk of the City and County of Honolulu for 24 years. I knew Lawrence Kentwell, John D. Holt and his daughter Eliza very well, having first met Eliza when she was living in Honolulu. My acquaintance with her would be between 1904 and 1907, but I was not in very frequent contact with the family. The occasion for my knowing Eliza was when my friend Lawrence Kentwell was wooing Annie Holt. Then I would go down to the house on parties during this period, at which times I would see Eliza quite frequently. From my personal knowledge she was not the equal of others, being "lolo" by nature. I am familiar with the Hawaiian word "ihepa," and would say that that was a fair description of her mental attitude—either that or "lolo," another description of one's mentality. I never succeeded in carrying on a sensible or rational conversation with her. She would hardly answer one's attempt to carry on a conversation but would act in a "sissy" way, hiding her face, for instance, stooping her head down, and would never say one word to a stranger or to those whom she would know. I myself, who was there quite often, would notice her withdrawing from those who were there and not uttering a single word. At this time she was ten, twelve, or thirteen years of age. I would observe her whenever I called of an afternoon, and would see her playing with children smaller and younger than she

(Testimony of David Kalauokalani.)

in the yard. It was apparent to me that she was not one who could easily carry on any conversation, and in all the time that I knew her I never heard her carry on a rational conversation.

Cross Examination.

After a period of twenty or thirty years I do not remember any distinct conversation that I had with Eliza when she was playing with the smaller children. She would stand in the doorway looking at me and looking at my other friends and trying to listen to the conversation. My impression was that she was not of the same mental calibre as other children. Many a time I tried to carry on a conversation with her but she would not respond. She would giggle and laugh and run away. She had a defect in her eyesight, "cast" being probably the right description. I could not term her crazy. The words "ihepa" and "lolo" both convey the same basic interpretation. During the twenty years that Eliza has been away I have never had occasion to discuss with anyone her mental condition, nor have I ever heard it discussed in any way in my presence. Eliza was of a "very bashful nature."

CHRIS J. HOLT

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am a son of Owen J. Holt and a nephew of John Dominis Holt. I knew Eliza Holt when I was

(Testimony of Chris J. Holt.)

a young man at Makaha. In 1900 I sold my one-twenty-sevenths interest in the Holt lands at Waialua to the Waialua Agricultural Company, Limited for \$20,000. Aside from my one twenty-seventh interest in these Holt lands, the conveyance also covered in addition about 186 acres of land in the gulch and a little on top of the mountain at Wahiawa. I wouldn't call it good land. There was no apportionment of the consideration as to my interest in the Holt lands and this separate parcel of 186 acres. I knew at that time that the Government was selling better land at Wahiawa at \$5.00 an acre, which Government land was better land than this particular 186 acres.

I remember Eliza's birth—at that time I was living in Honolulu—and often went down to Makaha, on my vacations. I first remember her as a child. During maybe two vacations I stayed in the same house as my Uncle John with Eliza. Later, on vacations, I stayed with my brother James R.'s family in the same neighborhood. I remember Eliza living at numerous places in Honolulu, including my brother William Holt's at Waikiki, the Kentwells, and the Seas. I visited these places from time to time and remember seeing Eliza there until she finally left Honolulu. During that time when I knew her I would call her imbecile; that is, she was feeble-minded. In town when I knew her one could not get very much conversation with her; I called her and a response would come from her in a childish way.

(Testimony of Chris J. Holt.)

In Honolulu I also observed she could not look out for herself very well. This was called to my attention in numerous ways, my mother frequently telling her to go and take a bath and change her clothes. I observed her condition before she took her bath or changed her clothes, and it was slovenly. I never saw her read, although plenty of papers and reading material was accessible to her. I do not remember whether or not I ever endeavored to find out whether or not she could read. She would not reply to the questions I might put to her; she would not answer simple little questions put to her by me. I do not remember ever seeing her write. When she was a big girl she would prefer to play with children six or seven years old, all younger than she. During the entire time that I knew her, until she was matured and went away, there was no change in her condition, to my knowledge. During that time I never had, or heard anyone else have, a rational and sensible conversation with her.

(In response to a question put by the court, the witness stated that he never tried to write letters to her or to her father after the latter left Honolulu, nor did he ever get what purported to be a letter from Eliza.)

Cross Examination.

I do not profess to remember specific conversations that I had with her in Honolulu after a period of twenty or thirty years, but I have a general impression of how I was impressed by Eliza at the

(Testimony of Chris J. Holt.)

time. I have not heard her discussed in any way since she left here in 1906. I have never heard any discussion as to whether she could read when she was in Honolulu, and the same as to writing. When I went to the Kentwells I never saw Eliza doing any work. I sometimes took meals there. She might have taken dishes from the table but that I do not remember, it being a long time ago. When asking her a question she would give an answer that would not be responsive, and her condition was very apparent, even a stranger being able to observe it if he talked with her.

MRS. ANNIE KEAHIPAKA

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am a sister of Oscar Cox, United States Marshal. I live at Waialua. I knew John Dominis Holt and his daughter Eliza, having got to know Eliza on an occasion when she came to my house in the country with Owen Holt's widow. Eliza was then about sixteen or seventeen years of age and stayed with me about two weeks or a month. In the same party were the two Miss Holts and Mamie Christian—this visit being at a time before Eliza had been married to Christian. I knew Eliza at a later time than this, having seen her sometimes when she came to Honolulu to stay with Mrs. Owen

(Testimony of Mrs. Annie Keahipaka.)

Holt. From my observation of Eliza when she was visiting me, she is what you call a feeble-minded,—we call it “ihepa”; I noticed this condition because if one tried to talk to her she would not answer. I have tried to talk to her and could get no intelligent reply at any time. At eating time she had to be held by the hand and told to come and eat. I have had no occasion to see whether or not Eliza could read or write, nor do I know whether or not Eliza could sing or count. During the time I knew Eliza I saw no change in her condition as described by me. In all the time I knew Eliza I never heard her carry on a sensible or rational conversation with anyone. She did not understand you. I never saw her go down to the water. On one occasion I was sitting on the beach with old Mrs. Holt, and Eliza was sitting off by herself, talking to herself, and I laughed at the way Eliza used her hands, turned to Mrs. Holt and called her attention to the girl, whereupon Mrs. Holt replied, “Eh, ihepa.”

Cross Examination.

I do not remember how many times I have seen Eliza. The first time I saw her was when Eliza came to visit me in Waialua, when she was about sixteen or seventeen years old. I remember distinctly trying to talk to Eliza but she never answered, only laughing and turning her head around. I saw Mrs. Kentwell and Eliza speaking together, with their arms around one another; I also saw them going around together that way. I

(Testimony of Mrs. Annie Keahipaka.)

do not remember whether Mrs. Kentwell talked to Eliza in Hawaiian or English. It was perfectly apparent to anyone that she was "ihepa" by looking at her, and this condition continued up until the last time I saw her.

MARY KUPIHEA

was called as a witness by the Petitioner, was sworn, and testified through the Hawaiian interpreter as follows:

Direct Examination.

I knew John D. Holt and his wife Kaahanui, as well as John D. Holt's two former wives, both of whom had died and by whom he had no children. While I was not present at the birth of Eliza, I heard of the birth, was shown the baby, and knew Eliza as a child at Makaha. I lived first with James Holt and later with his brother, Mr. John D. Holt, they being my cousins. When I went to live with Mr. John D. Holt at Makaha, Eliza was six or seven years old,—a big girl. I lived there for one year. I remember Eliza when the latter came into town and was an older girl.

When I or others would speak to Eliza and ask her why she did not get herself fixed up, wash her face, or dress properly, she would giggle and screw up her face. She was ihepa. After Eliza left Makaha I remember her living in Honolulu, at which place I would sometimes come to visit Eliza's aunt, Mrs. Holt. I spoke to Eliza in her home at

(Testimony of Mary Kupihea.)

Makaha in what little English I knew. "Thepa" means one who is crazy. Eliza could not realize what was being said to her and acted in a foolish fashion. She could not take care of herself, and I used to help her mother wash her feet and clean herself. Sometimes Eliza went out to the cow barn where she tied herself with the tails of the cows. She could not take care of herself and was fond of playing with cats and dogs. I have not seen Eliza since the latter left Hawaii for the States with her father and Kentwell. When I would ask Eliza whether she could not fix herself, comb her hair and the like, she would give indications of not realizing what she was doing. She could not sew, half her dress being torn from her running in the lantana bushes. She could not do the housework, this being done sometimes by myself. I had a child who also lived with the Holts at Makaha. Eliza did not know how to play the guitar or piano, nor did she know how to play the ukulele. When I knew Eliza in Honolulu the latter was practically about the same as she was at Makaha.

Cross Examination.

Eliza, at Makaha, was then big enough to play, and in fact played, with cats, dogs and calves, but did not seem to realize or know what she was doing. I saw her chasing the tail of a cow. I stood by and laughed, but Eliza's mother was afraid Eliza might be poked by the cows and killed, so she was taken to Honolulu. I would speak to her and accuse her of

(Testimony of Mary Kupihea.)

being just like an insane person, whereupon Eliza would laugh and act. I tried to teach her to work but she was so lazy she was helpless, so far as the mother was concerned. She was a real "ihepa," sometimes sitting down and playing with dirt or stone or rock, and when Eliza would be told that was dirty, she would act in a foolish fashion. She was worse than "lolo" because she was altogether different from a person with insanity. A "lolo" person is one who cannot help themselves up from bed—numb. Eliza had crossed eyes.

Re-direct Examination.

"Ihepa" might apply to a person who had crossed eyes as well as one who did not. A person who could not take care of herself was "ihepa", and whether or not one had slanting eyes did not make that word stronger or weaker.

Re-cross Examination.

There are many people with cross eyes who are not "ihepa", though I am not well versed in that. It is not necessarily true that Hawaiians refer to people with cross eyes as being "ihepa."

MAUEL S. DEPONTE

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I knew Eliza when she was living in Honolulu about 1904 or 1905. She had been married at this

(Testimony of Manuel S. Deponete.)

time a couple of years. She was living with one of the Christians, as was her father. I used to call there very nearly every day, knowing the Christians well. Old Mr. Holt was very fond of drinking gin, and I was accustomed to going to the saloon with John F. Colburn, getting an order from him, and taking home gin to the old man. Eliza lived at the place in question for about a year. I knew her before she got married, when she lived with the Seas. I also knew Kentwell well.

The impression made upon me by Eliza was that she was "lolo". I tried to talk to her a number of times but never got any intelligent response to anything that was said by me. Four or five times I came with her from the Christian place to my house to get Portuguese bread which my mother used to bake. On the way to my home for the purpose indicated, Eliza would walk in a foolish fashion and shake her head, and if I said anything to her she would laugh. I remember addressing remarks to her on a number of occasions and would ask her why she would stand by the gate, waving at persons passing by and laughing at everything she saw; why she would stand on the gate and turn around making all kinds of faces; and the only answer she would give me was to laugh and make silly faces. On the occasions when she came with me from her house to my house to get bread, I recall two or three times she would leave me, go right to the side of the street, and there obey the calls of nature, whereupon I would ask her, "What is the matter with

(Testimony of Manuel S. Deponte.)

you? Why do you do that? Can't you wait until you get home?"—whereupon she would simply laugh, walk away and shake her head.

Eliza had no capacity for handling money, nor did she understand the value of the same. When the Christians would give her money to buy bread they would say, "One loaf," and give her ten cents, or whatever the price might be, and that if it was twenty-five cents for anything she was to get they would tell her to get no more than that. I have never seen her in the act of making any purchase, but I personally saw the family hand her very small pieces of money with the instruction that that was for one particular thing, whereupon she would go over and get it. I never saw her read, I never took a paper and tried to see whether she could read. I had no occasion to see whether or not she could write. I saw her in back with other people around the house and during all the times that I met her I never saw her carry on a real conversation with anyone. The most intelligent response I ever heard her give was "No use," many times. Anything that was said to her would cause her to laugh. During the time that I knew her there was no change in her condition that I noticed. I did not know her when she was pregnant and never saw her in contact with her child. The times referred to when Eliza relieved herself on the street in my presence was in the afternoon, some time after lunch, in the daytime.

(Testimony of Manuel S. Deponite.)

Cross Examination.

I am fifty-one years of age. While I knew Eliza before she got married, I did not know her to talk to—merely knew that she was a Holt. The first time that I had a conversation with her was when she came to live on Punchbowl with the Christians, to which place I used to go nearly every day. I visited in the home with Mr. Christian after she was married, but Christian was not then living with her; she was then getting a divorce. The people living with Christian at that time were old Holt, Mrs. Holt, Mamie Christian and her daughter,—this about 1904 or 1905. I used to do lots of errands for the old man. I then had my own business and did not have to work for anyone. I never saw Eliza go around town alone, as the family would not allow her to do so. I have never seen her go into town. She stayed inside the fence. On the occasions when she would be given a dime to get a loaf of bread she would get the bread and bring it back. While no one was ever with me on the occasion of Eliza relieving herself on the street, there were people on the street.

I have not talked these incidents over with anyone before I took the witness stand. I saw Eliza only once with her husband and I then walked with them up Fort Street. She would not talk. I do not think I tried to talk to her, but I had tried to talk to her before at Palama. I base my impressions of her condition upon the observations I made of her and from her actions, the actions described by me in

(Testimony of Manuel S. Deponte.)

court, and also I took an interest in her because her father wanted me to marry her. This was when I was getting gin for the old man and when I was about twenty-five years of age.

Re-cross Examination:

The occasion when I saw Eliza at Palama was in 1901 or 1902 when she was living with the Seas. The Seas were living near Palama Settlement in Honolulu when Eliza lived with them, and not on King Street near Piikoi.

MRS. JOHN LOPES

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am the daughter of Mrs. Mary Kupihea. I knew Eliza as a child at Makaha. I was reared by Mrs. Cushingham and remember Mrs. Cushingham teaching the children at Makaha. I was too young to remember much; I do remember her classes but don't remember whether Eliza could do her a, b, c's. From my observation of Eliza and from my memory of her, her condition was "ihepa,"—the English word for that condition being "feeble-minded." I remember Eliza when she was seventeen or eighteen years of age, just prior to the birth of her baby. I called to see Mrs. Holt and old lady Holt, and the girl in her condition, I saw climbing over the—

(Testimony of Mrs. John Lopes.)

jumping from the chiffonier to the bed, and the day I was there I said, "Don't do that in the condition you are in," and she only laughed at me and jumped up on the chiffonier, and I said, "In the condition you are in you are not supposed to do that," and she only laughed at me. I never heard Eliza talk to anyone in a sensible or rational manner. The last time I saw her at Waikiki before Eliza went away her condition was the same.

Cross Examination.

I would speak to Eliza in English and Eliza very seldom answered the questions put to her, but just laughed. I only saw Eliza to talk to this one time in town. I never saw her after that. Mrs. Cushingham was a lady who did not want me to associate with the Holts.

R. W. HOLT

a son of Owen Holt, was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am a son of Owen J. Holt, and a brother of Annie Kentwell. I remember my uncle, John D. Holt, and the latter's daughter Eliza, whom I first saw when she was quite young, at Makaha. I then lived at Waialua and would come occasionally to Makaha to visit the family. I also remember Eliza after she had moved

(Testimony of R. W. Holt.)

to Honolulu, at which place they lived in my house at Waikiki for maybe a couple of years. I came there myself occasionally from the country. At this time Eliza was possibly fifteen or sixteen years of age. I do not remember when she was married, and did not attend the rape trial against Hall. I heard about Mrs. Kentwell bringing an action to annul Eliza's marriage to Mr. Christian, but was not present at that either. From my observation of Eliza during the time I knew her, and particularly the time that she was living in my home at Waikiki, I would describe her condition as feeble-minded, "ihepa," "lolo," she having no mind of her own. I tried to talk to her, but she would just look at me and laugh and run away. In all the time I knew her I never heard her carry on a sensible conversation with anyone. She could not cook or help around the house when she was in my home. So far as I knew, she never did any sewing. Someone had to take care of her all the time. In the matter of personal cleanliness she did not care who was around but would go and answer the call of nature any old place, not caring. I have seen this happen on more than one occasion when other people were around. I never heard that she could read and never knew that she could, although she was put in school by my mother. I never tried to find out what she had learned at school because I was down in the country most of the time. I knew nothing of her capacity for handling money, and I do not know whether she could write. During all the time I knew her there was never any change in

(Testimony of R. W. Holt.)

her condition. I never received a letter or writing from her of any kind.

Cross Examination.

The first time that I ever heard any discussion as to whether or not Eliza was mentally incompetent in 1910 was a week ago; I had not heard of it before that time. When I first knew Eliza she was about a year old. On this occasion I went over from Waialua to work on the ranch, and stayed at Makaha six or eight months. I went there again, possibly when she was two years old or a little older. I have no recollection as to how much time I spent in the country when she lived there, and could not tell the year when she left the country and moved to Honolulu, but do know that she came into town. I do not remember any particular conversation I had with her in the country, although I might have said "Hello, Eliza," to which she would remain silent, because that is the way she always acted every time I spoke to her; she would look at me, squint her eye, and run away.

She lived on Fort Street for a few years, after which she went to Waikiki to my own place where both she and her father lived for a couple of years. Her father was very fond of her, but as to whether she was fond of her father I could not say, as she acted peculiarly sometimes. When her father would call her she would run away, the times I was there.

After living at my place, John D. and Eliza went to live at the Richards place. Thereafter I saw her

(Testimony of R. W. Holt.)

at Waikiki, living at a different place, some two or three years before she went away. She did not know whether anything was right or wrong. She did not care. She was always called "lolo" by us, as well as other people, and one could tell by looking at her that she was "lolo"; she did not look like an idiot but she looked feeble-minded.

MRS. J. J. SMIDDY

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

As a girl I was at St. Andrews Priory a portion of the time that Eliza Holt was there. I knew Eliza there and had occasion to observe her among other girls. She was a girl that gave me the impression of being below the normal,—feeble-minded. When I spoke to her she didn't respond at all, just hung her head, or just acted foolish. I know she was not in any particular class, because she never would attend classes very well. She was not a very bright child and I don't think she was ever made to study there, or she could not. I remember that Eliza played a lot with the younger children, children about seven,—five, six, or seven, but do not remember how old Eliza was,—perhaps eight, nine, or ten. If she had any fruits, peanuts or candy, she was very liberal and would share with the other girls.

(Testimony of Mrs. J. J. Smiddy.)

Cross Examination.

I heard her recite at times as I passed through Eliza's rooms while classes were being held. She was standing up trying to say something but she never could, and they really didn't force her. The subject she was attempting to recite I suppose was reading and writing, ordinary class work. I have never seen Eliza sign her name. While I never heard the fact that Eliza was feeble-minded discussed out of the school, in school it was discussed, and I had discussed the matter with Annie Holt (Kentwell).

T. H. PETRIE

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

My name is T. H. Petrie and I am an officer and vice-president and a director of the Waialua Agricultural Company at the present time. I am not sure whether I was an officer and director before 1910 without looking it up, although I was director in 1910 and at the time that this transaction was put through. I was also one of the trustees of the Helemano Trust (Ex. A-1) and a purchaser and holder and shareholder of one of the shares in that trust. I was also an officer and director during its period of life, extending over a few years prior to 1921, of the Kaala Land Company, the Helemano Land Company, the Kemoo Land Com-

(Testimony of T. H. Petrie.)

pany, the Kawaihoa Land Company, the Anahulu Land Company, and the Kaheeka Pineapple Company.

As an officer and director of the Waialua Agricultural Company I had personally very little knowledge of the fact that transactions were being negotiated which resulted in the purchase of the two-thirds undivided interest in the Waialua lands of May 2, 1910. I may have known something about the anticipated transaction, but nothing that was handled by the Waialua Agricultural Company, but as a director I did have direct knowledge. I knew that moneys were loaned for the purchase, and if I remember correctly, to Mr. W. R. Castle, Trustee.

To the best of my recollection Mr. Castle purchased these properties with money loaned to him by Waialua or Castle & Cooke, I don't know which, which properties were then hypothecated to secure the loan. This loan was carried and the interest was paid thereon during the time that Mr. Castle held the properties, as far as I recollect. Upon the sale of the properties to the Helemano Trust the loan was repaid.

(Counsel for petitioner then referred to a declaration of trust of W. R. Castle setting out the terms of the trust under which he held the properties, dated May 28, 1910.

"Mr. CASTLE: I thought that was in evidence, but I guess not.

The COURT: Declaration of Trust, W. R. Castle, was reserved. The number was reserved but the document was never brought to Court.

Mr. CASTLE: Well, I will get that later.")

(Testimony of T. H. Petrie.)

(Referring to document dated May 17, 1920, (Ex. A-32) the witness continued:)

That is my signature and I was one of the three persons therein named. Although Mr. Castle purchased this property in the way indicated, he held it to be disposed of subject to such directions as might be given him by the three persons named in the document referred to. Mr. Charles H. Atherton was an officer and director of Waialua at the time, and the same is true of Mr. E. D. Tenney. We three persons could have directed Mr. Castle to transfer the property to anyone whom we desired. I had no personal or financial interest in the property. To the best of my recollection, I assumed the trusteeship to control that property with the hope that at some time, if it could be legally done, to instruct Mr. Castle to convey it to the Waialua Agricultural Company, Limited, but that time never came.

So far as that trust is concerned, the time did not come when it could be conveyed to Waialua, but the time did come when we three decided it would be advantageous to have the property transferred to the Helemano Trust. I remember the circumstance of the property being transferred to the Helemano Trust for a consideration of \$120,912.47. This amount represented, so far as I can recall, the book value.

“Q. In other words, you were not requesting the transfer to the Helemano Trust which as a sale should be an emergency undertaking between the buyer and the seller?

A. I would not say that,—that is what the property cost us,—cost Mr. Castle.”

(Testimony of T. H. Petrie.)

I don't know whether I would have sold the property to anyone else other than Waialua for 120 odd thousand dollars. At that time the Waialua Agricultural Company was not in a position to buy it. I would not say that a two-thirds interest in these lands in Waialua was worth no more than \$127,000. We were willing to sell it to the Helemano Trust for that sum.

(Counsel for Waialua then admitted that the purchase of May 2, 1910, was made originally for the benefit of Waialua Company and that the series of transactions subsequent thereto gave the Respondent no different status than it had by virtue of the deed of May 2, 1910 (Ex. A-21), the court ruling as follows:

"I understand they are not seeking to aid their position now by any series of transfers to Waialua after 1910. They are willing to abide by the evidence of the status as to what construction should be put on the 1910 transaction as if direct to Waialua at that time.")

(At this point counsel for Petitioner requested of the court a ruling on Petitioner's demand that Respondent furnish the net profits made by Waialua Agricultural Company on the lands in question, and Petitioner offered to make proof of such facts, including the amount of sugar raised on the Holt lands for the period, the price obtained therefor, and the expenses incurred in connection therewith. On objection by Respondent the objection was sustained, the Court ruling that unless Petitioner could show whether these lands were peculiar and better sugar lands, on account of the lack of necessity of irrigation or the lack of necessity of fertiliza-

(Testimony of T. H. Petrie.)

tion, or any other factor that goes to the question of these lands being peculiarly valuable, or the converse, but until it could be shown that Waialua sugar, by raising it on the Holt lands, makes the Holt lands unique, then the court would not go into the question of profits as bearing on the question of value of the lands and cancellation of the deed.)

(Counsel for Petitioner then offered that part of the record of the guardianship of John D. Holt and James R. Holt, which included the petition, the answer and appointment of guardians of these persons as spendthrifts, stating that the offer was made in connection with the showing that would be made of a congenital case of imbecility and that the record showed the immediate ancestor was incompetent from the excessive use of alcohol and weak-minded for over a period of twenty years. Counsel for Respondent objected to such offer on the ground that the appointment was made in 1897 and the guardianship order dismissed and discontinued in 1900 or 1901, and that the same was not material and was remote. The court reserved its ruling on the offer of the guardianship proceedings.)

MRS. ROBERT KING

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am a granddaughter of Elizabeth Aldrich. I knew Eliza at the Kentwells two or three years before the

(Testimony of Mrs. Robert King.)

latter went to England, and have also recently seen Eliza in Oxford, England. From my observation of Eliza in Honolulu, she was a simple, silly girl, who did not seem to take in anything that was said and was sort of ignored by us. From my observation of her I would not say that she was capable of carrying on a real sensible, rational conversation with anybody. Eliza's condition, as I observed it in England, was the same as I had observed in Honolulu.

Cross Examination.

I can not recall any specific conversation I ever had with Eliza, or whether she did any work about the house, or any specific instance, because that is going pretty far back. When Annie Kentwell talked to her or she talked to Annie they spoke English. John D. Holt did not live with the Kentwells at that time in Honolulu.

CHARLES A. DE LA NUX

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have lived in the Territory of Hawaii all of my life, and am forty-seven. I knew both John D. Holt and his daughter Eliza. I first met them when they were living on Fort Street in Honolulu, Eliza then being four or five years younger than I. Our families visited each other, her father and my mother being

(Testimony of Charles A. De La Nux.)

cousins, but I most frequently saw her at my own home. Eliza and her father would be at my home two or three times a week and desultorily off and on,—this for a period of some two or three years. I also knew her after she got married to Christian. When I first knew Eliza she was between fifteen and seventeen years of age. From my observation of her, I would describe her as “simple-minded,”—a “nut”; the basis for this opinion was formed through the fact that during the time the visits referred to were transpiring, my mother and Eliza’s father tried to arrange a marriage between us. In my conversations with her she appeared to be too stupid to answer any civil questions, so that I could not “fall” for her. Most of the time she used to act silly, shrug her shoulders, silly grins and foolish answers. In all the time I knew her and in my talks with her, I never got a sensible or intelligent response to any question put to her, nor in my presence did I ever hear her carry on a sensible, rational conversation with anyone. After Eliza was married to Christian she was sometimes brought to my house by her husband and there was no change in her condition.

Cross Examination.

I thought it was a good joke that my folks wanted me to marry Eliza. Whether Eliza took it seriously, I don’t know what she thought. We did not tell her about it but we were trying to make love to each other like any other young people would do, but after I thought it was a joke. I took a dislike to her because

(Testimony of Charles A. De La Nux.)

she was not the sort of a girl to get married to anyone. The subjects talked with her by me were those things generally talked over by lovers. I refused to go ahead with any marriage to her.

CHRISTIAN S. BERTELMANN

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I knew Eliza well as a girl of sixteen or seventeen in Honolulu for a period of about four years when they were living on Fort Street. The neighborhood children used to play marbles, in which game Eliza would indulge. From my observation and acquaintance with her. I would call her a "lolo" or "simple-minded." In talking with her, sometimes she would be all right and sometimes run into the house and laugh, something like that. In playing marbles with her I would sometimes take them away from her as a joke and when I would return less than the amount I had taken from her she would not know the difference between how many she had and how many were returned to her.

"Q. Will you just illustrate a little more in that connection. Suppose you took ten marbles away from her and would give her back only five marbles,—did something of that kind ever happen? This is a leading question.

(Testimony of Christian S. Bertelmann.)

A. Well, I don't know. Sometimes I don't think she would know; sometimes she would. She was a funny girl that way. Sometimes she would remember things and sometimes she would not."

Cross Examination.

She had a funny way of talking, what you call "simple-minded", more than anything else. In the matter of the marble incident I would sometimes tell Eliza that I owed her ten marbles and she would not know whether I paid her ten marbles, or five.

ELI M. CRABBE

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am a son of Horace N. Crabbe. I have known Eliza from the time she was seven or eight years of age until she left the Territory. I visited the family home quite often and knew Eliza well. We Hawaiians would call her "ihepa" or "lolo," otherwise known in the English language as feeble-minded. I have gone with her and seen her in the act of making purchases at the store when occasionally her father would give her a dime or a quarter. She would not know what she was buying, but would point to what she wanted, and after she had made the purchases she would give

(Testimony of Eli M. Crabbe.)

them all away to the young ones that were with her. If she got part of it, all right. If she did not get part of it, it was all right. She would take whatever was given her by the store keeper. So far as I know she could not hold a conversation. She was not able to look out for herself, or change her clothes, and I personally saw Mamie Christian bathe her when she was about fourteen years of age. She always played with younger children. I have never seen her trying to read, but have seen her grab a book and look at the pictures, which was all she could do, so far as I know. I never heard her carry on a sensible conversation with anyone.

Cross Examination.

Her condition was about the same as that of the statue worshipper. I did not state I was taking the stand to "stick" Waialua. "Ihepa" was a common expression among the Hawaiians. I would not say Eliza was "pupule."

MRS. JOHN H. WILSON

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am the wife of John H. Wilson, who is mayor of the City and County of Honolulu. I knew Eliza as a young girl in Honolulu, and particularly remember her when in an advanced state of pregnancy just prior to the birth of Eliza's first illegitimate child. When she

(Testimony of Mrs. John H. Wilson.)

was pregnant, one Sunday I was going with my mother to church, and just out here, at the old Opera House we had before, past that was the old Gibson home, and she was sitting out with a couple of boys playing marbles. Of course she couldn't stoop, and sat flat on the ground, and I said, "Eliza, what are you doing here?" and then the boys started to run with the marbles and she started to cry, just like a child, and I called to them and they brought them back when I called, and I said, "How many marbles have you here?" and she said, "I don't know." They didn't give back all the marbles, but they ran, and that is all she got. Her condition of pregnancy was noticeable at that time.

I knew Eliza when she was four or five years old, saw her frequently when she and her father would come to Honolulu, and after she and her father moved to Honolulu.

After Eliza's marriage to Albert Christian I saw them once in a while, passing them on the street. One day she was going to church on Fort Street and she dressed up very nice. She had a nice hat on and nice flowers, and I asked her, "Where are you going Eliza?" She replied, "Going to church." I remember seeing Eliza outside the court house during the proceeding to annul her marriage, also when she lived with the Kentwells at Waikiki just before their departure for the mainland. The impression I got of Eliza during all of the time that I knew her was that she was a feeble-minded girl—that she was what the Hawaiians called "ihepa." During all the time that I knew her I never

(Testimony of Mrs. John H. Wilson.)

at any time heard Eliza carry on a rational or sensible conversation with anyone.

Cross Examination.

I can not remember the periods of time that Eliza lived in certain localities in Honolulu, nor can I give the exact dates on which I would stop and talk with Eliza. I saw her many times on the street and would stop and talk to her to see if she had improved, having pity for her kind. In regard to marbles taken from her by her playmates, I said, "Eliza, are these all your marbles?" She replied, "My marbles." And, while I was talking to this poor child those boys started to run, and I saw that and when she turned around the marbles were gone and she cried.

Re-direct Examination.

I asked Eliza, upon observing her condition of pregnancy, "What's that?" to which Eliza replied, "I don't know."

The

DEPOSITION OF CATHERINE HAMBRIDGE.

taken November 1, 1928 on behalf of Petitioner pursuant to an open commission in Oxford, England, was read into the record, as follows:

Direct Examination.

My occupation is that of housekeeper, which I have followed for at least twenty-five years. I was in Mrs.

(Deposition of Catherine Hambridge.)

Kentwell's service at Oxford on July 8, 1911, and lived in the Kentwell house for about eight months and since that time have visited the Kentwells continually, and during my acquaintance with the Kentwell family I have come in frequent contact with Eliza and knew her well. Eliza was not able to take care of herself in the ordinary way,—had to be told things that should have been told a child; had to be told more often than not to have a bath and when to change her clothes and linen. She wrote and read very badly, frequently went into fits of temper if anybody offended her, and if she was much upset she would go upstairs and shut herself in a room and not come down to meals. This happened fairly frequently. Eliza was very fond of the Kentwell children, but very often got exceedingly angry and I have known her to give the little boy a knock. The cause of these fits of anger with the children was because she wanted them to do something which they objected to. I never knew Eliza to keep up a rational conversation with anyone. She could not reason out anything with you. She would go out and you did not know when she was coming back. One day she went, I believe it was fair time, and she came back drenched. She went out several times and when she came home she was very wet and went straight to her room. She would not see Mrs. Kentwell at all. She generally had to be told when to do her room, but liked to do it herself. She always had to be told to change her bed-clothes.

I was present and was housekeeper in the Kentwell home at the time of the death of Eliza's father, and

(Deposition of Catherine Hambridge.)

Eliza showed no grief of any kind upon his death; no actual grief that I noticed. There were no tears shed when her father died. That I do know. We had a nurse and she did not help nurse him at all. She never went near.

As to going out alone: Well, she did go out alone sometimes. She went to the pictures, but she was always told what time to come back. As far as I can remember she would come back at very fairly the right time.

During all of the years I knew Eliza since 1911 her condition had been the same, and she was more like a child than anything else. She rarely carried on a conversation. She did not seem to have the power to. If she liked a person very much she might do anything. I never quarreled with her but the servants quarreled with her. I treated her as a child from the time I went there. I saw that she was not really all there and I tried to be tactful with her so that I never quarreled with her and she would fairly do the things I asked her. You might get her to do the things I asked her. You might get her to do things by coaxing her.

Cross Examination.

Once I saw Eliza attempting to play the piano and just striking notes with no time or music in it, on which occasion Eliza had childishly remarked, "When I was at school I took several first prizes." She went to a shop once, bought a book for a present but the account was put up to Mrs. Kentwell. The whole thing of course was childish. I treated her as such and spoke to her as such. If I racked my brain I might find a lot

(Deposition of Catherine Hambridge.)

of odd things which showed how simple she was. Eliza avoided meeting people who came to the house. She would go upstairs to her room and oftentimes just sit for hours in her room doing nothing; she would frequently spend her time cutting out paper figures and flowers. She could not read much.

The

DEPOSITION OF MISS LOUISA TAYLOR

taken November 1, 1928 on behalf of Petitioner pursuant to open Commission in England, was read into the record, as follows:

Direct Examination.

I am a trained nurse. I have had experience and training as a nurse in various hospitals, institutions, and training homes since 1895. I have had experience throughout my nursing career with many mental cases. I first became acquainted with Eliza in 1911, at which time I was called in to nurse one of the Kentwell children. I lived in the Kentwell home for nine weeks, and on another occasion, about 1913, stayed in the house for about a fortnight. I also was a day nurse for Mr. Holt, Eliza's father, for ten or eleven months, in 1920 or 1921. In regard to Eliza's mental condition, I class her practically as an imbecile. Eliza was very erratic in her temper, would fly into tantrums without apparent provocation. She could not enter into a con-

(Deposition of Miss Louisa Taylor.)

versation very well. She had very short sentences. Eliza had no sense in taking care of herself. Her sewing was not very good. I have seen her handle small quantities of money, not a great lot. She generally bought little presents with it for people at home. The things she would buy were perhaps a little, small tray cloth for Mrs. Kentwell. She would buy the goods and stitch it herself; and small things for the others.

Cross Examination.

I am not a mental nurse. I saw Mrs. Christian most in 1920 or 1921 when I was nursing Mr. John D. Holt, because she used to help me with her father; though sometimes she would not.

The

DEPOSITION OF MARY CLAPTON.

taken November 2, 1928 on behalf of Petitioner in England, pursuant to open commission, was read into the record as follows:

Direct Examination.

I was a servant in the Kentwell home and knew Eliza during the five years I worked there. She cannot take care of herself and she wears clothes from one week-end to another unless you have the clothes in your hands and put them on her. Even to her bath, you have to tell her to have a bath once a week otherwise she would not do it. She can read a little but

(Deposition of Mary Clapton.)

she cannot understand what she is reading. In the words, big words, she cannot spell or pronounce them right. I have seen her try, but she cannot make out the words. I have only seen her write her own name.

As to Eliza's spare time, she generally gets hold of a newspaper and cuts out rubbish—cats and dogs and pictures like that. She cuts them out all crooked. She generally puts them in a drawer in the kitchen. She has never used the telephone. She has several times been up in her room and would not come down and has remained there all day long. I have been up and asked her to come down to her meals, and she has slammed the door in my face. When it has been a bitter cold day she has been in her room with the window wide open. I have been up and asked her to shut it and she has slammed the door in my face, shivering with cold. She cannot cook. I remember several distinct instances of temper on Eliza's part. As to her clothes, I have seen her tear them up,—good clothes they were. She has torn them up in front of me.

Cross Examination.

I have talked this over with Mrs. Kentwell and gone through this testimony with Petitioner's attorney, one question after another, just as put here.

(Upon representation of counsel for Petitioner made to the court, that the sisters of the Convent of the Sacred Hearts were not permitted to leave the convent,

the court adjourned to the convent, at which place the testimony of the Sisters was taken.)

SISTER ANNE JOSEPH

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have been a Sister at the Sacred Hearts Convent for forty-six years and was there at the time that Eliza was there, remembering Eliza as she was at the school very well. I was just a young novice at the time that Eliza was at the school. Her teacher and the Sisters they did the teaching. They were all attending to all classes. I wasn't doing anything, just talking. Eliza was unable to make any progress at all in her studies. I was with, and assisted, the particular teacher who for some time was attempting to teach Eliza, but she could not learn. They would teach her reading but she could not promote. She really learned very little reading; couldn't read. I can't remember, so many girls in school I can't remember just what she ever learned. She was not an idiot nor insane, but she acted like a little girl, a little child, a girl playing with the little ones in the school. She was very polite; had a kind heart, would say, "Good morning, Sister," "Good afternoon, Sister," and "Thank you." She would write her name but she would not be very—suppose you gave her a bill, she would not know what it was. She would

(Testimony of Sister Anne Joseph.)

just sign that without knowing what she was doing. They never gave her a bill but I know she would not be able to sign. She sat there. She could not recite by heart, she could not memorize words like that. Once in a while she would say something. She would ask for her father to come and see her, and she would come over when the father came to see her and say, "Father came to see me and brought me cakes," or fruit and things like that. I know she was altogether like a little child. The father used to come sometimes drunk to the gate here, he couldn't hardly keep himself up. Eliza came here when she was thirteen. After she was transferred over to the big girls I didn't have anything to do with her.

Cross Examination.

I never saw her taking communion. I do not know what training she had before coming here.

SISTER MARY AUGUSTA

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have been at the Sacred Hearts Convent in Honolulu for forty-six years. I was there at the time that Eliza attended and lived at the convent, and remember her. When she was first brought to the school her father brought her. I remember asking him if he

(Testimony of Sister Mary Augusta.)

wanted to talk to the girl, because she was kind of silly, you know. Only to see her you could tell there was something the matter. Eliza was like a little child in school. She was with me in the trunk room and in the dining room. That is all, she never gave me any trouble. She was just like a child; could never learn nothing. That is all I can say about her. I am not sure how many years she was in school. It is so long ago now I don't remember. Maybe four or five years. When she left here she was just the same, never learned anything. I did not teach her myself but I saw her teachers teaching her many times. She would try her best but she can't learn anything. She must have written because she was always trying to make her write her name, but not very much. This childlike condition of hers was something you could tell right away, the way she was trying to do things. She wasn't able to reason. When you say something, right away she would run away. I have talked to her myself many times and she would run away and say nothing.

Cross Examination.

When she was too big to remain with the small children they put her on the other side, just to be with the big girls. I never teach. I had charge of the trunk room and dining room. Her father wanted her to learn everything. I myself tried to teach her to sew but she never learned. Eliza dressed herself, took her bath, and knew her own locker. Sometimes she would be with me in the kitchen. She was friendly, polite, a

(Testimony of Sister Mary Augusta.)

nice little girl. If you did anything for her she would thank you. She never got into trouble, and was obedient. You would say, "Eliza, do that," and she would do it, but after she forgets right away. This institution does not take people known to be feeble-minded. We took her through kindness because she was small and gave us no trouble. She was nothing like an imbecile but more like a child six years old. You couldn't reason with her. I think she left at the age of about fifteen, but it is so long ago I have forgotten. It is more than twenty years.

SISTER THERESA

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

Prior to becoming a nun, I had myself been a student at the Sacred Hearts Convent in Honolulu during the last two years that Eliza was there. Eliza was a year older than I, and when I entered the primary grade Eliza, who was at the convent when I entered, was below me in school. Eliza was not an intelligent girl but she was a good-hearted girl. She really couldn't learn, she was not able to learn. She was easily influenced and she had a very kind heart and you could easily influence her. She often spoke about her cousin Annie. I think she was of that spirit that had a mind that could not be really developed,—a kind of small

(Testimony of Sister Theresa.)

child. She must have been maybe about eleven or twelve.

“Q. And you would describe her as having the mind of a small child?

A. Yes, not able to be developed.”

Cross Examination.

I was never in any of Eliza's classes so when I say she could not learn, this was from hearsay. I never saw her try to write.

SISTER LEOCADIA

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have been a Sister at the Sacred Hearts Convent for thirty-three years and am assistant to Mother Superior. I have the account books of the convent, showing that Eliza had entered first for music lessons April 1893, that she entered as a boarder at the boarding school in September 1894, and that she remained at the school as a boarder until the end of June 1899. I have the account books of the convent. We didn't keep the other records. These account books show that Eliza had had an operation on her eyes while at the school, and I nursed her after the operation.

(Testimony of Sister Leocadia.)

Cross Examination.

Eliza talked with me a little, but not very sensibly; like a little child, but I could not say definitely whether she did or did not talk sensibly—it is too long ago.

Re-direct Examination.

Records of grades have not been kept.

The

TESTIMONY OF SISTER MARGARET,

for Petitioner, who was at the time confined to her bed, was by stipulation of counsel received as evidence without her presence or the administration of the oath, and without the presence of counsel of questions by counsel. Sister Leocadia visited Sister Margaret and reported that she had known Eliza but had not been her teacher; that she remembered that she was not like a normal girl as to her mind, and she was put with the bigger girls because we couldn't leave her with the small children all the time.

The

TESTIMONY OF SISTER REGOBERT,

for Petitioner, also ill and confined to her bed, was taken in like manner. She testified to the effect that she knew Eliza and that she had a childish mind. The witness further testified as to Eliza that she cannot judge for herself what was right and what was wrong.

(Testimony of Sister Regobert.)

but she was never unpleasant or difficult to manage. As to her physical appearance, she remember that her eyes were crooked, but didn't remember much about it, and further testified that she was like a small child when she was big.

Trial having been resumed in the court room,

MRS. HARRY MURRAY

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am sister of the probation officer, John D. Holt, Jr. I knew Eliza for some years when she was in her teens, and remember seeing her when she was married to Albert Christian. Although I was not in Eliza's company very much at the time, from my observation of Eliza she was not normal and like other girls, being very simple in her actions, and I never held a conversation with her as I would with a normal person. When spoken to, Eliza would act very silly and never gave normal answers to questions. I don't remember whether I got an intelligent reply to any questions. During the time that I knew her I never heard her carry on a sensible, rational conversation with anyone. I think Eliza's condition can be described as "simple-minded, or ihopa."

(Testimony of Mrs. Harry Murray.)

Cross Examination.

I guess that Eliza would answer questions addressed to her, but it would depend upon what kind of questions they were; not all questions, because she would not know how to answer all of them.

MRS. MINNIE C. ALDRICH

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

My husband was a grandson of old R. W. Holt. I remember John Dominis Holt and his daughter Eliza, having known the latter after my marriage in 1884, on occasions when Mr. Aldrich and I would go down on visits to Makaha. When I first knew Eliza the latter was a year or two old. My husband and I would stay at Makaha over week-ends,—this over a period of four or five years. Eliza and her father moved around Honolulu so often that I could not remember any particular place where they stayed, but I last saw Eliza in 1920 in England. For the period of years that we visited at Makaha from time to time on week-ends, I would say that Eliza was not like normal children, but that the word "ihepa" would be the most fitting word for her condition. As Eliza grew larger I could not talk to her as I would to a normal child and get normal responses, but the responses were silly grins, looking

(Testimony of Mrs. Minnie C. Aldrich.)

up with her funny eye, and not answer you anything. I saw no efforts made in connection with teaching Eliza and did not know whether she was capable or did learn to read or write. I noticed no improvement or change in Eliza's condition from the time I first remembered her until I saw her later in England,—she was always *lolo*, *ihepa*. When I saw Eliza in England the latter was a grown girl and I hoped to see her improved in her condition. She appeared rational enough to look at, but in talking with her it did not seem to penetrate at all. Eliza never joined in any conversation or talked with the family in England, but usually went to her room.

Cross Examination.

I would not say that Eliza was crazy, but that she was "*ihepa*" or "*lolo*." She could not answer a question intelligently. When one looked at Eliza she looked strange. She was not a regular drudge in the Kentwell family. I saw her walking through the rooms and do not remember seeing her in any way helping with the household work. I was only in the Kentwell household over night. I do not think that Eliza felt easy at any time, but she did not seem to be depressed, particularly in the presence of Mrs. Kentwell; I never saw Eliza moving around the Kentwell home like a frightened deer. I did not chat with Eliza on the English trip. When I spoke to her she laughed and smiled, a silly laugh. I would speak to Eliza on several subjects but Eliza would not get my questions straight and would give a wrong answer to them.

MRS. HILDA CHILLINGWORTH

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am about Eliza's age. We lived on adjoining properties when girls. I remember the fact of the birth of Eliza's illegitimate child, and, in regard to Eliza's pregnancy and her actions at that time, of course, we didn't realize what the trouble was. We used to make fun of her a great deal, never realizing, of course, that she was going to have a baby, but she would play around with us just the same and went around as though there were nothing the matter with her. I don't think she realized what was going to happen.

My earliest recollection of Eliza was when she was about twelve or fourteen years of age. While I have never been particularly intimate with Eliza as a girl, I saw a great deal of her and had played with her over a period of two or three years. As to what kind of a girl she was, and her condition, it is very hard to state, except our impression of her at the time was that she was just simple,—simple-minded. I imagine the Hawaiian word would be "lolo." In playing games we would always take advantage of her. In playing hide we would make her seek and let her keep on looking, and we would play marbles with her and we used to take them away from her. I don't imagine Eliza would know how many marbles she would have at any time. It seems to me we would give her a few or whatever we had and she would be satisfied—I don't recollect.

(Testimony of Mrs. Hilda Chillingworth.)

Cross Examination.

In regard to her conversational powers, she could carry on a child's conversation, I think, as far as my recollection went, but I don't think she was ever intelligent enough to discuss things. As children I guess we didn't carry on conversations that meant much at that time. I don't think she could have remembered the name of a street on which she had been, but I think she could tell us where she had been.

MRS. CHUNG

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I used to keep a grocery store and knew Eliza about four years when she lived in the neighborhood, in about 1890. When Eliza was about fifteen or sixteen she used to come into the store once or twice a week to buy candy. "When she buy the candy, but she don't know how to talk much, and she just point to the candy and I give her about five cents, and she give a dollar and don't take the money away; don't know change come back or not, and she go out and I tell her how much she want and she don't know, and pointed, and I give her that, and have to chase her out in the street to give her the change. She acts kind like silly acting." Eliza would go off without her change and I had to go around the counter to give Eliza her money. She could not count out the money and make correct change

(Testimony of Mrs. Chung.)

and didn't know the difference between ten cents or five cents. She would take whatever I gave her as being right. When I talked to her she would laugh and act silly; she did not talk right. During the time that I knew her and while Eliza was coming into the store, sometimes she acted differently. I talked to Eliza in pidgin English.

Cross Examination.

As to whether I had found Eliza in any way feeble-minded, "Yes, I find her kind of silly; don't know how to talk." She would buy candy and once in a while buy a loaf of bread or crackers. There were other children who couldn't make change but I don't remember their names. Eliza was buying things from my store before she went to boarding school.

GEORGE W. MACY

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I work with the Internal Revenue Department. I knew John Dominis Holt and Eliza Christian when they were living in Honolulu. I frequented the place, knowing the Holt boys, visiting them at the Holt place now and then, on which occasions I would see Eliza sitting there by herself. She would go into laughing fits now and then. After she was married to Christian

(Testimony of George W. Macy.)

I visited the Seas, George Sea being a friend of mine, and the Seas living next door to the Christians. Eliza had had a child which had been adopted by the Seas. At the Seas I remember seeing Eliza, and remember the death of the baby. I was present at the funeral and remember seeing Eliza there. Eliza appeared to me to be feeble-minded. I have seen her in the Kentwell office with Mrs. Kentwell, and Eliza had to be led on the streets, not being safe by herself; I have personally seen her being led on the streets. In all the time that I knew her I never heard her carry on a rational conversation with anyone. When addressed or spoken to she simply stared at you. She could not carry on a regular conversation, not to my knowledge. During the time I knew her there was never any improvement or change in her condition so far as I could see.

Cross Examination.

I can not testify that I knew Eliza very well but have seen her now and then. I never became intimate with Eliza but had known her first probably since she was ten years old. The indications of feeble-mindedness were observed by me the first time I saw her. At that time she would sit by herself and stare at things; laughed, jumped up and ran around, and generally acted silly. I remember distinctly her condition, and believe that a feeble-minded person can be told from observation. I could not say how many other children there were in the neighborhood at the time, nor could I give the names and age of any other child. I had no personal contact with Eliza, but saw her in the house

(Testimony of George W. Macy.)

where I visited. I discussed her condition years ago. I have not discussed the matter since 1924, nor have I heard the suggestion made since that time that Eliza was "ihepa", feeble-minded, or silly. When I first saw Eliza I would probably see her once a week.

I think my statement of Eliza being led along the street by Mrs. Kentwell refers to a time before Eliza's marriage to Christian. The last time I saw Eliza was when she was living with her husband and they used to come over to the Sea's where the baby was.

Re-direct Examination.

I talked with counsel in the hall just before coming in to testify.

MRS. MAUD BETTENCOURT

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

My maiden name was Crabbe. I remember Eliza as a girl of about twelve years of age, she and I being of the same age. I knew Eliza for a matter of years when the Holts were living on School Street and we on Nuuanu, and Eliza frequently visited my home with her grandmother. I, as a child, observed Eliza's condition; I always understood her to be a feeble-minded child. I took her to be ihepa. "Ihepa" refers not to a condition of the eyes but to a condition of the mind.

(Testimony of Mrs. Maud Bettencourt.)

Cross Examination.

Had Eliza been in a certain store, she could not have told the name of that store. I first heard the word "ihepa" long before the year 1924.

The

DEPOSITION OF MISS ALCE KENTWELL

taken November 1, 1928 on behalf of Petitioner in England pursuant to open commission, was read into the record as follows:

Direct Examination.

I was born in Honolulu in 1902 and am twenty-six years of age. I have a B. A. degree from St. Hugh's College, Oxford. I have studied law and have taken the preliminary bar examinations in the Inner Temple. I have known Eliza from about the time that we first came to England, when I was about eight years old. During all the years that I knew her, Eliza has never been able to care for herself, and the matter of caring for her, for her clothes and her cleanliness, has had to be attended to by members of the family. In her spare time she would sit around or cut out pictures. Eliza has no conception of the value of money whatever. Everything is written down, the actual money is given her. If it is not given her she would probably come back with short change. That has happened on several occasions. She cannot handle figures coherently and cannot add or make change. She collects

(Deposition of Miss Alice Kentwell.)

and hoards all sorts of useless things, such as empty matchboxes, pieces of candle, pencils, picture post cards and children's toys. She has never been able to read, except small words, or write, except her name. She has never been able to take care of herself when sick. On several occasions Eliza sat in her room, suffering with the cold, with the windows wide open. She would fly into tempers for no reason. For instance, I remember my small brother wanting to go into a room. She shut him out, but he would knock again, and she flew into an ungovernable temper.

She cannot do household work properly, such as dusting or making beds, and cannot sew. She cannot cook properly. I can remember an occasional joint overcooked and the pudding burned. In all my life I have never heard her carry on a rational conversation with anyone, and from my observation and association with her, in my opinion she was incapable of carrying on such conversation.

She repeats herself several times, the same story, very intangible. On meeting strangers: she shakes hands and there is a sort of look of bewilderment written all over her face. She is just bewildered. If two people are in the room having a conversation, and she is also in the room, she does not volunteer any statement at all, but would just sit in a retiring way. I should say she has no idea of making plans or arrangements. When we go out we say, "Get ready to go out, get your things on."

(Deposition of Miss Alice Kentwell.)

Cross Examination.

My father is L. K. Kentwell, a member of the Bar, being called in 1916 here in England. He read law at Oxford University for some four or five years, taking his B. A. in law and is now practicing abroad. He has always devoted himself to the law. I remember Mr. and Mrs. Holmes came to tea with us in 1912. We had tea in the garden. They also could form their opinion of Eliza if they spoke to her.

The

DEPOSITION OF ANITA KENTWELL,

taken November 1, 1928 in England on behalf of Petitioner pursuant to open commission, was read into the record as follows:

Direct Examination.

I was born in 1909. Eliza is some sort of adopted cousin of mine. I am really very vague about that. I remember her since 1914. She never had any idea of the value of money and has never been able to make change. She has never been able to add or subtract or read. She cannot write except to sign her name, and you have to point out the letters to her; otherwise the result is unintelligible. I have helped her write letters but it has been pretty hopeless. In her spare time she sits alone and starts into space. She collects all sorts of worthless things such as bits of candle, dead flowers, pieces of string, and keeps them in her drawers.

(Deposition of Anita Kentwell.)

with her clothes. She is unable to sew, and her cooking is mostly burned. As to housework, well, she would go into a room and polish, say, half a piano, and then leave it. She would go on to something else, give it a flick, and say the room was done. What would you say, "a lick and a promise?" She has never been able to take care of herself personally or her clothes. She will take any explanation; for instance, we were going to the theater. The theater started at eight o'clock, she could not go but she wanted to. We said we were going for a walk; when we got back she said, "Have you enjoyed your walk?"

She would often sit in her room, in mid-winter, in the cold with the windows open. She was unable to distinguish between a weed and a plant, in weeding the garden. She was subject to fits of violent temper for no reason. Such fits of temper were most extraordinary. For instance, I was going to hang some clothes on a line; she came out and said, "I cannot bear the squeaking of the rack." I said, "Don't be absurd." She dashed to the knife-box and got out a knife, so I went upstairs and left her to it. She has never been able to make any plans for herself, and the family has had to plan everything for her. I have never known Eliza to carry on a rational conversation with anyone. She sits there, like a stuffed dummy.

Cross Examination.

I would begin to notice things round about the time I was ten. When she wrote her signature it was extraordinary letters, like a spider's scrawl.

The

DEPOSITION OF MISS ELIZA JANE GOSLING

was taken November 2, 1928 on behalf of Petitioner in England, pursuant to open commission, and was read into the record as follows:

Direct Examination.

I have no occupation at present. I am keeping a university lodging house. I was a trained nurse and have been nursing about thirty years, since about 1901.

I knew the Kentwells and Eliza Holt Christian first in 1911 when I went to the Kentwell home to nurse Mrs. Kentwell's daughter. I was there five weeks. Mrs. Christian seemed strange and weak minded. I didn't know much about her actions as I only had meals with her, and did not see her except for that. She did not look clean and I did not hear her carry on a really rational or sensible conversation with anyone.

Cross Examination.

I was with the child all the time and really don't know much about Mrs. Christian.

The

DEPOSITION OF DR. THOMAS SAXTY GOOD

was taken November 2, 1928 in England on behalf of Petitioner, pursuant to open commission, and was read into the record as follows:

Direct Examination.

I hold the degrees of O.B.E., M.R.C.S., L.R.C.P., and M.A., Oxford, and am Medical Superintendent of the

(Deposition of Dr. Thomas Saxty Good.)

Oxford County Mental Hospital at Littlemore, lecturer on neurology, member of the staff at Oxford University, and author of a work on tests for mentality. I have been connected with the Littlemore Mental Hospital for thirty-three years, being superintendent for twenty years. I am an Officer of the British Empire, hold a Master of Arts degree from Oxford University, am a member of the Royal College of Surgeons and Licentiate of the Royal College of Physicians. During the War I was Consulting Neurologist to the Third Southern General Hospital; for four years I had a neurological hospital, first in the Army in which I still hold the rank of Lieutenant-Colonel, and for two years under the Ministry of Pensions. I am on the staff of the Radcliffe Infirmary in Oxford as a neurologist, and lecture there on "neurological methods" for the Faculty of Medicine of Oxford University. In addition to that I am expert and referee for the feeble-minded for the City of Oxford and also for Oxford County.

I examined Eliza Christian professionally as to her mentality on four occasions, of which I have record; first, some time during 1915; second, on May 31, 1925; third, on November 30 or December 1, 1926; and fourth, just a few days ago. In my opinion Eliza Christian is a congenital imbecile, or feeble-minded person, with the mentality of a child of about four of five years of age. She is one of what, under the English law, is a feeble-minded person. In my examination of her in 1915 I approximated her mental age as between six and seven. The system used by me and under which I

(Deposition of Dr. Thomas Saxty Good.)

examined her in 1915 is the "Binet & Simon" test. Since then I have used a modification of an American test "Yekes." I have not absolutely formed a different test to anybody else but I work on a modification of Professor Yerkes and Dr. Bridge's test.

(At this point, and by way of illustrating certain features of witness's testimony, two exhibits were introduced in evidence by the Petitioner, one being a pamphlet of which the witness was the author, being marked "Exhibit 1" in connection with his Disposition. The other exhibit introduced by Petitioner was a certain paper containing thereon drawings made by Eliza in the presence of Dr. Good. This was marked "Exhibit 2" and contains, according to Dr. Good, on one side a drawing of a diamond made by Mrs. Christian, with a proper diamond before her as a model. Upon the other side of the paper appears, at the bottom, Eliza's attempt to copy a square, and upon the top thereof another attempt to copy a diamond. Petitioner also introduced in evidence a book by Dr. Good, entitled, "A Scale of Tests for Estimating the Intelligence," which was received as an exhibit. These are original exhibits and are, by order of the Supreme Court of Hawaii, made part of this record and statement. Witness then spoke in detail of the result of his recent examinations, and gave an explanation of the system that he used in reaching this conclusion.)

WITNESS RESUMES: She cannot compare simple objects. Might I give an instance? For instance, you ask, "I want you to tell me the difference between an

(Deposition of Dr. Thomas Saxty Good.)

apple and banana." She told correctly an apple was round and a banana was long. You give one mark for that. I said, "Give another difference." She said bananas grew on very high trees and apples grew on very low trees. The next question I asked her was, "What is the difference between wood and glass?" She did not attempt to answer; she was completely confused. She could not give any difference between those, nor could she between paper and cloth. Therefore one said that her powers of comparison were very much below the normal. Then there is the definition which is used to see whether people know things in terms of use and in terms superior to use. You ask, "What is a chair?" She said, "To sit on," but when you pressed her she could give no further definition of a chair or further comparisons with other objects. On asking her, "What is a horse?" she simply gave a description of a horse in a carriage, but she could not tell you what good or use the horse was in that carriage.

I gave her quite a simple addition sum and she could not, as far as I could ascertain, do any addition at all. A question I did ask her was a simple subtraction in terms of money; she did not seem to know how many shillings there were in a pound, and she could not even tell me if I took three away how many were left. I tested her for her power of reading; that test does test because there are certain words jumbled up which have to be put together to make a sentence, and she could not read some of the words at all. She could read some of the small, little words, but a word of

(Deposition of Dr. Thomas Saxty Good.)

perhaps two syllables very often one had to spell it out and then she did not seem to know it. Then again, her vocabulary, which is a well known test, in which you say, "Now I am going to give you three minutes, I want you to say as many words as you can," a word like dog, cat, piano. She produced about twenty words, simply the names of nouns, which is very much below what is considered even normal. It has been known for a normal child to produce something up to two hundred in that time.

"Q. A normal child of what age?"

A. A normal child up to fifteen. It is generally considered the intellect is complete by about fifteen."

One of the tests I put to her was as follows: I said, "I want you to listen to me carefully and remember I am going to say something silly; do you quite understand?" She said, "Yes," and showed some interest. I said, "In that sentence there will be something silly." The sentence used is this, it is put in this way, "I have three brothers, Paul, Ernest and myself, what is there silly in my saying that?" She gave an answer to the effect that it was saying I had three brothers but nothing appeared that she saw what is the obvious absurdity that I included myself as a brother. The second one I put to her was this, "I saw a finely dressed gentleman walking down the streets with his hands in his pockets, swinging a cane." She said there was nothing silly in that at all. Another was, "There was a man on a motor bicycle and he ran into a motor car and

(Deposition of Dr. Thomas Saxty Good.)

was killed, and they took him to the Radcliffe Infirmary and they are afraid he won't get well." She said she could not see anything in that at all except it might be taking him to the Radcliffe Infirmary.

As to the condition being a permanent and continuing one, "In my opinion there is a case either from birth or from a very early age. When I say a very early age it is within the first two or three years of life, but my opinion is it is a congenital case as we call it. * * * There is, practically no condition of an acquired mental illness in which you could get such absolute childishness as this in every faculty, and also that as far as my experience goes I know of no condition after an acute illness which could approach the condition that I have seen this same person in; I know of no illness."

(The following questions were asked and elicited the following answers from the doctor:)

"QUESTION: Having to do with the capacity of a person to manage their own affairs or adjust themselves to the ordinary circumstances of life, would a condition of this kind indicate a greater or less capacity for those things than the various forms of insanity?

ANSWER: It is a less capacity. I mean to say the faculties that we use in adjusting our life which is a question of looking after ourselves and managing property, are not so to speak developed, whereas there are many people who are as the law says insane who can deal

(Deposition of Dr. Thomas Saxty Good.)

with quite complicated intellectual problems, can deal with money, and know all about their money. They are not capable of controlling themselves in their actions or statements about other people, but there are many cases of paranoia, a delusion state in which they are quite capable and do carry on their business, but they form false impressions about the actions of other people.

QUESTION: Would one in this condition be capable of understanding the significance of the conveyance of property?

ANSWER: In my opinion, no.

QUESTION: To come back to the testimony. You have testified that in your opinion this Mrs. Christian has the mentality of no more than a child of from four to five years of age?

ANSWER: That is my opinion.

QUESTION: Is it your opinion that that was the condition in which she was at all of these other times that you examined her?

ANSWER: Yes, I think so. Of course I will try to be as frank and honest as I can; this last time I went through the whole of the tests; the time before it is possible that I did not use absolutely all. I used my own experience; I gave her the benefit of the doubt. This time I did absolutely according to the mathematical test. It is difficult to be quite certain within a year, but two years retardation is considered extremely dull and backward, whereas three

(Deposition of Dr. Thomas Saxty Good.)

years retardation compared with the normal is considered a sign of definite mental enfeeblement.

QUESTION: Then your opinion is her condition has been the same since very early childhood or since birth.

ANSWER: Yes, I have a copy of what I found in the last examination before and there is no difference that I can see."

Cross Examination.

In feeble-mindedness, I don't think there is a great deal of difficulty in expressing an opinion in 1928 as to a condition in 1910, where you have any degree of feeble-mindedness. I would not pledge myself to say that the condition in 1928 was precisely the same as in 1910. She was not reticent at her examinations. From the fact that Eliza had a child in 1916 I could not possibly say because a feeble-minded has a child it will make any difference to her mental state of feeble-mindedness. That is not one's experience, one has seen many feeble-minded who have had many children but their feeble-mindedness is neither more nor less because they have a child. Whether or not feeble-mindedness might not vary during the patient's life, such, for instance, as insanity which may come and go, my answer is, "If you ask me does insanity vary with times of life, I should say yes, but mental enfeeblement I should say no."

The

DEPOSITION OF LILY JAMIESON

was taken November 2, 1928 in England on behalf of Petitioner, pursuant to open commission, and was read into the record as follows:

Direct Examination.

I worked as a maid for Mrs. Kentwell for three or four years, I should think about 1909. I left for a period of about a year and later came back when I again worked for her three or four or perhaps five more years, helping her in the work of the house. I was then away two or three years, whereupon I came back again. Mrs. Christian was living with the Kentwells all the time I was there. As to Eliza's temper: Yes, she got into a temper, she came into my room between five and six in the morning and thumped me on the head and quite dazed me. I had to call Mrs. Kentwell to my assistance. This happened only recently. The cause of Mrs. Christian's striking me was that the kitchen door was locked, and she seems to think it was through me it was locked. She thought I was the cause of it being locked, and so she thought she would have her revenge on me. She wanted to be down in the kitchen early. Because the door was locked she turned on me. As to Mrs. Christian's cleanliness: Well, she would never change her things nor never wash, not when she was told. In her spare time she generally used to go into her own room. She would sit up there; she would read or cut things out of the newspapers. By "reading" I mean she

(Deposition of Lily Jamieson.)

would look at papers then but she cannot read sentences properly. I have heard her try. She has done that with me. She would cut out pictures and advertisements, chiefly advertisements, just anyhow she would cut them, just keep them, collect them together, keep them.

She was very fond of going to the door and talking with them (the tradesmen), and giving silly, trifling things to them like flowers, pencils, or anything like that she would give. If a little money was given to her she would often give it away to people in the street, or if not, she would spend it on silly things. Things that were of no value at all, childish. She could not handle money because she could not give correct change and she could not count money, that I know from my own experience.

In regard to writing: No, she cannot write at all. She cannot make her letters nor spell properly. You would have to tell her how to spell, she cannot spell. I have seen that. She has always had to ask someone to spell words for her. Once when I was with her (on the street) she turned round and swore at me simply because I wanted her to come home. She wanted to stay out and she turned round in the street and swore at me. She has gone off and stayed out quite late at night, and Mrs. Kentwell or someone has had to go and search for her. She has often come to our house and has acted very silly. Dances about very silly you know in the house. I have always had to bring her home, she could never go home by herself. All the time I knew her she has

(Deposition of Lily Jamieson.)

never improved, has never got any better. She has always got into these terrible tempers. She has gone for tea or sugar, and would not know when change was given her if it was right or wrong. She has had to ask me.

The

DEPOSITION OF MRS. FREDERICA
JAMIESON

was taken November 2, 1928 in England on behalf of Petitioner, pursuant to open commission, and was read into the record as follows:

Direct Examination.

I am the mother of Miss Lily Jamieson who has just testified. I knew the Kentwells since they came to Oxford in 1910. When Mrs. Christian came to my house with my daughter I noticed she did not act like a sensible being. She used to dance, letting her hair down and pulling up her clothes.

Cross Examination.

Mrs. Christian talked to me about all sorts of cuttings in the papers. She used to say she had a lot of money and would give us a good fat check. She said there was money in the family and she was going to get her father's share. She once gave me some newspaper clippings but I don't know where they are now.

(Counsel thereupon showed her certain newspaper clippings and asked her to identify the same, which were later introduced into evidence as Respondent's

(Deposition of Mrs. Frederica Jamieson.)

Exhibit 1 in connection with the deposition of Mrs. Frederica Jamieson.)

WITNESS RESUMES: Yes, I believe she gave me these clippings. There was something about the Holt affair. They were foreign papers. Yes, these are the papers (referring to the papers exhibited by counsel). She gave me these clippings when she was talking about money, I think it was more to see who it belonged to. She did not say much about it because I was not in. These were left when I was away from home. I had been in the North of England. She had been home with my daughter. Lily and when I came back these were lying there and I scanned them over. Of course they did not interest me. I did not ask her to bring them. I did not know she had them. I did scan the clippings but I can't remember now just what they were; something about the Holt family. A lawyer came to see me and I handed him these papers saying, "There is some silly things she gave me." I had meant to give Mrs. Christian the papers but I had forgotten. She brought a few other papers for my daughter to read. All kinds of papers, we all laughed at that. What did we want to do with foreign papers.

(Respondent's Exhibit 1 in connection with the deposition of Mrs. Frederica Jamieson was introduced and received in evidence, over the objection of Petitioner, the exhibit being newspaper clippings, as follows:

(a) Clipping from Honolulu Advertiser of Tuesday, November 15, 1910, giving a list of the

(Deposition of Mrs. Frederica Jamieson.)

assets in the Holt Estate received by the Hawaiian Trust Company from John F. Colburn; the list being taken, according to the clipping, from the proceedings in a pending case of James L. Holt v. John F. Colburn;

(b) Clipping, with no date, concerning the death of James Robinson Holt;

(c) Clipping from the Hawaiian Star of July 15, 1904, relating to the annulment proceedings of Eliza Holt Christian by her cousin and Guardian (Annie Kentwell, during her minority) against Albert Christian upon the grounds of conspiracy on the part of Christian and others, and of Eliza's feeble-mindedness.

REV. STEPHEN L. DESHA

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have been a pastor of a Hawaiian church on the Island of Hawaii for forty-five years and have been a Territorial senator from that island for some eighteen years. Hawaiian is my language and I have translated various works into Hawaiian. I have likewise been for twenty years editor of a Hawaiian newspaper on the Island of Hawaii. I have acted as interpreter for persons making speeches in English. I preach in Hawaiian, and I have studied over this period of years and written

(Testimony of Rev. Stephen L. Desha.)

as well as spoken the Hawaiian language. The word "ihepa" means feeble-minded. "Lolo" refers sometimes to the body and sometimes to the brain. If "lolo" is used for the mind it is the equivalent of "not wisely." "Ihepa" never has any reference to a defect of the eyes. "Ihepa" is an old Hawaiian word, very old. When I was a boy in school nearly sixty year ago I knew a boy in school who was kind of feeble-minded and we called him ihepa.

Cross Examination.

It is true the average Hawaiian of today has not studied and followed up his mother tongue, so that words which I use in a correct way might not be so used by others. The younger Hawaiian does get mixed up in the use of "lolo," "hepa," and "ihepa." "Lolo," for instance, when people are playing marbles, might be "not smart," with the younger generation.

The

DEPOSITION OF ROBERT HUTCHINS

taken November 3, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I am twenty-eight years of age. I lived next door to the Kentwells in Oxford and have known Eliza Christian ever since I can remember. In regard to her actions, she always appeared to be very childish. She was treated as a child. She had a violent

(Deposition of Robert Hutchins.)

temper, and on one occasion I was teasing her, and was very frightened at her temper then shown to me. During all the time I have known her I have never heard her carry on a rational, sensible conversation.

The

DEPOSITION OF MRS. LAURA MATHEWS

taken November 3, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I was a charwoman in the Kentwell home for some six years and knew Eliza Holt Christian quite well since 1911 or 1912. I came sometimes four half days a week and sometimes two half days, depending how much Mrs. Kentwell wanted me. I used to see Eliza Holt Christian about the house, who would help a little at things about the house, such as dusting and the like. Eliza Holt Christian was not quite capable of taking care of herself. She was always on about young men and all that silly sort of talk. She was not very clean. She has often brought to my house bits of cuttings out of newspapers and torn photographs of the various Kentwells, some of which I gave back to Mrs. Kentwell.

One night she came down to our house and she wanted to know if she could stay with us. I said, "What reason?" and she said, "I was out all night last night." I said, "You were?" and she said,

(Desposition of Mrs. Laura Mathews.)

"Yes." I said, "But I have no room to put you up," and she said, "Well, I am not going back to Mrs. Kentwells." I said, "Why not? Why aren't you going back?" She said she was not going back; she wanted to go out and wanted to earn her own living. She said she had been in the shrubbery all night with the chauffeur inside Mrs. Kentwell's gate.

Cross Examination.

This was about 1922. Mrs. Christian did not come to see us often but when she was out she used to pop down and have a cup of tea and quite enjoy it. The time that Mrs. Christian stayed with us over night she seemed very unhappy and wanted to get away from the Kentwell house and wanted to get out and earn her own living.

The

DEPOSITION OF FANNY LOUISE
HUTCHINS

taken November 3, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I have been next-door neighbor of the Kentwells and Eliza seventeen or eighteen years. Eliza has been over to my home and I have spoken to Eliza a great many times. Eliza would bring my family small presents, such as flowers and little ornaments.

(Deposition of Fanny Louise Hutchins.)

Once she gave a little china ornament to my father. Upon the occasions when Eliza came to our home, we always treated her as a child, telling her that it was time for her to go, and I have given her some little thing such as a piece of cake or a banana when I felt she had stayed long enough. On one occasion Eliza brought some handkerchiefs to me from the Kentwell home, which I returned to the Kentwells. I never sat down and discussed subjects with her. Eliza has always been the same mentally.

Cross Examination.

Eliza would come alone and go home alone.

The

DEPOSITION OF MISS ELIZABETH
WORRELL

taken November 2, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record, as follows:

Direct Examination.

I am a dressmaker and have known Miss Holt (Mrs. Christian) since 1912. I visited the Kentwell home during a period of some years to make dresses for the Kentwell girls, and during my time at the place noticed that Miss Holt was not normal. She had no opinion of her own. I never heard her carry on a rational conversation and I observed that her speech was very bad and in broken English. I remember Miss Holt having stated on one occasion

(Deposition of Miss Elizabeth Worrell.)

that she had been to the pictures and that all the gentlemen there were looking at her. During the time I knew her there had never been any change in Miss Holt's condition.

Cross Examination.

Miss Holt simply came to my shop at odd moments with the Kentwell children.

MRS. ROSE WIGHT

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I was a pupil at Notre Dame Convent during the time that Eliza was there. I knew her quite well and took frequent walks with her in the garden. As I remember, Eliza was about fourteen years of age and she was not even in the first grade but in a sort of infants' class below the first grade, though they may have done first grade work. (Regarding her ability to read:). On many occasions,—probably it will need a little explanation. I was rather fond of the children and it was our custom to take walks during recreation time. We had school hours so long we had to walk in the garden, and very often I would ask Eliza to walk with me, and on many occasions she would read me her lessons. When she had a successful day she seemed

(Testimony of Mrs. Rose Wight.)

very happy of accomplishment. She did very simple reading of four and five words, but she felt she was accomplishing something and was anxious to let me see.

(Describing the kind of girl Eliza was with reference to mentality:) Of course I don't really think I am capable of judging, but from a lay person's viewpoint I would say she had the mind of a child of six. (Speaking of the kind of conversations they had:) Conversations that would suit a child of six. She seemed to be a little child and I like to go out and talk with her about things that would interest her, things about the garden and about animals, things that would make an interesting story. (In describing Eliza's attitude toward her and how she reacted to kind treatment:) Yes, just like a pet dog would. I was very sorry for the child. I didn't see her every day, but perhaps every week. We sat at different tables.

Cross Examination.

She was very retiring and had no assurance at all. Annie Kentwell was not very kind to her. I didn't see Eliza every day, but perhaps every week. With Eliza my conversation was just a kindergarten conversation. Eliza was a girl who had never worn shoes before and had not been brought up in the social conventions. She was a very sensitive child.

The

DEPOSITION OF DR. A. T. WATERHOUSE,

taken November 5, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I have been a practicing physician for twenty-five years; for a number of years a member of the Mental Deficiency Act Committee for the City of Oxford; and since 1919 a member of the staff of Radcliffe Infirmary, Oxford University, in the Neurological Department. I have been engaged in examining, as to their mentality, mental defectives for many years. I hold the degree of Doctor of Medicine from Oxford, am a Licentiate of the Royal College of Physicians, and a member of the Royal College of Surgeons of London. I examined Mrs. Christian as to her mentality on two occasions, once in 1926 and once just a few days ago. I found her to be a feeble-minded person with the mentality of a child of approximately six years of age.

(Describing Mrs. Christian's condition:) Her recent memory is very poor, she is unable to repeat a short sentence after one and she is unable to repeat a short series of digits. She is unable to enumerate the objects seen in a picture satisfactorily and could give no interpretation of a simple picture. She is unable to compare simple objects. Her vocabulary is very small, she is unable to construct a sentence containing three given words, her power of comprehension is very limited, she has no power

(Deposition of Dr. A. T. Waterhouse.)

of appreciating absurdities, she is unable to rearrange words so as to make a sentence and she is unable to define simple concrete and abstract terms.

(As to the continuing nature of Eliza's condition:)

“QUESTION: From your examination of this patient, in your opinion would you say that the condition in which you found her is a condition of recent occurrence or has been a continuing condition for any time and period?

ANSWER: I should say it has been a continuing condition.

QUESTION: And in your opinion for how long would you say that condition had continued?

ANSWER: I should say it has most likely been life-long.

QUESTION: In making your examination and in reaching the conclusion that you have reached, giving the patient a mental age of approximately six years, I will ask you whether you endeavored to grade as high as you could or just what you did with reference to grading her strictly or leniently?

ANSWER: I graded her leniently. I graded her as high as I could.

QUESTION: I will ask you doctor if we were to assume, for the purpose of the question, I ask you to assume that the patient whom you have seen attended a school for six or seven

(Deposition of Dr. A. T. Waterhouse.)

years, being a Catholic convent, from there was taken to another young ladies' school, attended there for a year and then to a third school and attended there for a period of several months, and assume that at the conclusion of this time she had not progressed beyond the most elementary grade, had not learned to read or write, whether in your opinion that educational history would be significant as indicating a probable condition of the patient in the past?

ANSWER: Most certainly.

QUESTION: Would that tend to strengthen or otherwise affect your opinion as to the continuance of this condition?

ANSWER: It would very strongly strengthen my conviction that the condition was congenital."

As to insanity found in a patient, nothing can be said as to its past continuity; where there is found a condition of feeble-mindedness which is due to want of development, that obviously must have been present at all times in the patient's life.

Cross Examination.

I only saw this patient on two occasions. She was very much the same on the last occasion as the first in the way she answered almost all the questions, a curious similarity. My practice has been mostly among English people and I can not say from memory that I have ever had a patient from the South Sea Islands or the Hawaiian Islands,

(Deposition of Dr. A. T. Waterhouse.)

I do not think it is hard for a medical man to express his opinion as to what a patient's mental condition was eighteen or twenty years before his first examination of her. While I have said it is most likely her condition is lifelong, I can't swear it is lifelong. I would not say that a really feeble-minded condition varies from time to time with the condition of health, nor would I say that the condition of feeble-mindedness would be more noticeable at maturity than at a younger age. An observer like myself would notice the condition all the way through.

Re-direct Examination.

There would be no increase in a condition of feeble-mindedness in a person, in my opinion, between the age of twenty-four and that same person at the age of forty.

"Q. Given a feeble-minded person from an insane person, which would you say was more incapacitated at any given date?

A. You could say that if the condition of mind is due to want of development it obviously must have ben there always . . ."

The

DEPOSITION OF MISS MARY ELIZABETH
KENTWELL,

taken November 3, 1928 in England on behalf of
Petitioner, pursuant to open commission, was read
into the record as follows:

(Deposition of Miss Mary Elizabeth Kentwell.)

Direct Examination.

I was born in 1906 and am twenty-two years old. I remember Eliza as far back as I can remember anything. Nothing but the King's English has been spoken in our home. I have never heard Eliza speak or try to speak anything but an English word. I have never heard anyone attempt to speak to her in any language but the English language. This statement applies to her father speaking to her as well as anyone else. As a child I can remember that the little children used to make sport of her; that she has never had any idea at all of the value of money; that at times when she would buy things she would pick out some childish object such as a toy, a balloon, a little vase, or a pencil, take her money out of a handkerchief or small purse and put whatever money she had on the counter and let the shopkeeper take whatever he wanted. The family has never been able to let her have more than a very little small change. Eliza has never been able to care for herself in a personal way; she is very dirty and has to be made to bathe. A frequent way of persuading her to take a bath was to give her a piece of candy as a reward for doing so. She has to be told when to change her clothes. I have often had to bribe her to change her stockings or other part of her apparel with a chocolate. I remember an occasion when Eliza slept all night in her clothes. I recall her going out on a hot sunny day with rubber boots on. Eliza is not able to use the telephone, and notwithstanding that there has been a telephone in the house for over four years

(Deposition of Miss Mary Elizabeth Kentwell.)

I have never known her to use or talk over the telephone. She has never been able to learn to ride a bicycle and has no idea of balance. She has no idea of how to take care of herself when sick. Eliza has never been able to read. She can write very little. She can write her name, I have seen her practicing writing her name, but quite impossible to write a connected sentence. I myself have helped her write a letter by telling her what to put and how to spell it. These letters that I helped her to write have been usually to my sisters at school. The ideas have been mine, although the writing has been hers. She collects and fills her drawers with all sorts of newspaper cuttings, pencils, toys, and such things. She is unable to add or handle figures, and cannot do household work or sewing or cooking. I have never heard her carry on a rational conversation with anyone. At the time of the death of her father, Eliza showed no signs whatsoever of grief. Her fits of temper were usually the result of being teased. We used to tease her ourselves because it amused us to see her get into this temper.

MRS. CHRIS BERTELMAN

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I was a school-mate of Eliza's at the Priory. I used to try to get her to what you call read, and I

(Testimony of Mrs. Chris Bertelman.)

was unable to get her to, what you call, read. Eliza knew simple words like "it," "cat," and "and," but the two or three times I tried to read with her I found she only knew such simple words. I knew her before she went to the Priory and she was always, what you call, feeble-minded. Her conversation was simple and when one would attempt to carry on a conversation with her she would giggle and hang her head down.

Cross Examination.

I used to know Eliza when she was living up on Fort Street but I don't remember what year that was. It is so many years ago, I can't remember. I was a child myself at that time. I never heard her in any class and I only know about trying to get her to read. After the Priory I saw her when I was on the beach near the Kentwells. I did not visit the Kentwells, but Eliza would say to us, "Come in and have lunch when you get through with your bath."

The

DEPOSITION OF MRS. ELEANOR WAREING,
taken November 3, 1928 in England on behalf of
Petitioner, pursuant to open commission, was read
into the record as follows:

Direct Examination.

I have known Mrs. Kentwell and Eliza Holt Christian since 1910, sometimes going to the Kent-

(Deposition of Mrs. Eleanor Wareing.)

well home to do dress-making. I stayed there sometimes for six months, sometimes a fortnight, and sometimes for a week-end, sewing and looking after the family generally. This continued until 1916, since which I have seen Mrs. Kentwell a great many times, although not to do any work for her. Eliza would not come in at night. She was very sulky, and if annoyed would go upstairs and sulk for hours. We always had to make her wash and we had to see that she put on decent clothes. I never saw her try to read or write. She was away at times, and I knew of her having stayed in the summer house at the bottom of the garden and of her coming in in the early morning. I have let Eliza in more than once through the study window. Sometimes I would have to go out to find Eliza, and would find her at various places about the town or at her friends, the Arnotts, in St. Ebbes. In all the time I knew her, I never heard her carry on a rational conversation with anyone.

The

DEPOSITION OF WILLIAM JAMES FISHER,

taken November 3, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I am a boot repairer. I have known Eliza Holt Christian for about five or six years. She has fre-

(Deposition of William James Fisher.)

quently come to my shop and there I have had occasion several times to observe how she handled money. I have given her correct change and she has either said it has been too much or not enough. I have seen her try to count it, but she first made it one thing and then she has made it something else several times. In counting shilling pieces or two-shilling pieces she has taken them for sixpences or half crowns. I complained to Mrs. Kentwell about it.

The

DEPOSITION OF MRS. M. JOHNSON,

taken November 3, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I met the Kentwells and Mrs. Eliza Holt when they first came to England. Sometimes they visited my house and sometimes I visited them. The last I have seen of Eliza Holt was about three years ago. I have never heard Eliza Holt carry on a rational and sensible conversation with anyone, nor have I seen any indication of temper on her part.

Cross Examination.

I was simply on ordinary calling terms with the Kentwells. On one occasion Eliza Holt came to my house quite early one morning in a very poor state. She had been out all night, she came in a very poor state early in the morning; she was very like a tramp.

The

DEPOSITION OF ARTHUR LAMBERT,

taken November 3, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I am a plasterer, and married a former maid in the Kentwell home. In about 1913 Eliza Holt had often come to my house, presumably to visit with my wife, the former Kentwell maid. Eliza Holt would stay around the house all way, doing nothing but sit and lie about. Her talk was silly kind of talk. I cannot tell you exactly what she said, but childish talk. She would go of an evening, seven to eight o'clock. One time she stayed at our house a fortnight but never slept in the house, going away at night and returning in the morning. I told my wife to see Mrs. Kentwell and tell her we could not put up with her any longer. She went to see Mrs. Kentwell and Mr. Kentwell came and fetched her away. During the time she was staying at our house she was very dirty in her ways; when she would come back in the morning she would be as though she had ben walking about all night by the appearance of her; her clothes were very dirty. At the end of the fortnight she had no change of clothes, to my knowledge. I live in Oxford and about a mile and a half from the Kentwell home.

The

DEPOSITION OF MISS MARGARET JOLIFFE,
taken November 3, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

My father is a professor of mathematics at the University of London. I have known the Kentwells at Oxford since I was about six years of age, coming in contact with them for about nine years. Our families frequently interchanged visits, Eliza Holt Christian always being present. I always considered Eliza Holt Christian rather queer, people have always rather laughed about her. I found her difficult to talk with; her voice was rather peculiar, and I did not always understand what she had to say. Her speech was rather jerky and one could not always understand what she said. During all the time that I knew her I never heard her carry on a rational conversation with anyone. I recall on one occasion Mrs. Christian, going with the children to the cinema, at which place Mrs. Christian sidled up to the commissionaire and presented him with a bouquet of flowers which she had.

Cross Examination.

I recall the flower incident quite vividly. I am twenty-four, so that all the time that I knew Mrs. Christian she was a grown woman and was always with the children. I always thought that she was a nursemaid. I did not like her and tried to keep out of her way.

The

DEPOSITION OF
ETHEL MARGARET RICHARDSON,

taken November 1, 1928 in England on behalf of
Petitioner, pursuant to open commission, was read
into the record as follows:

Direct Examination.

I am a trained nurse and have known Mrs. Christian and the Kentwells ever since they came to England in 1909. When they came to Oxford I lived at No. 217 Woodstock Road, whereas the Kentwell home was at 159 Woodstock Road. I later, from time to time, lived in London, returning to Oxford for visits. I frequently visited in the Kentwell home and Mrs. Kentwell and Mrs. Christian frequently visited in my home. Mrs. Christian was unable to read except very small words; I have seen her try and fail. I recall one time when I asked her to read a letter when I had mislaid my spectacles; and she was able to make out only one word, "clock."

As to personal habits, one does not like to be too personal, but I should not say she was by any means a very cleanly person. Certainly she did not look much brushed up. As to her character of speech, she talks extremely indistinctly, and it is very difficult for me to make out what she is saying until the sentence comes to an end. She talks as if she had a sort of impediment in her mouth. She does not seem to have any interest in anything except in what you might call immediate creature com-

(Déposition of Ethel Margaret Richardson.)

forts. As to how Mrs. Christian would spend her spare time, from my observation she would just hang about, gaze out of the window probably and twist her apron between her thumbs. She is certainly very moody. She had a way of going into a sulk for no apparent reason and she stares in an uncanny way, and she looks very lousy, very lousy, as if she was nursing a grievance. All of the time I have known Mrs. Christian her condition has been the same.

GEORGE C. KOPA

called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am Deputy Registrar of the Territory of Hawaii, having in my care and custody the records of conveyances recorded from time to time in the Bureau of Conveyances. The deed of May 31, 1910, from James L. Holt to W. R. Castle, Trustee, (Ex. A-22), was recorded May 31, 1910, by Mr. W. A. Greenwell, of William R. Castle's office. The deed of May 2, 1910, from Eliza Christian et al to James L. Holt (Ex. A-21) was received for record in the office on June 23, 1910, at 11:24 A. M., being received from the office of William R. Castle and to that place returned.

LORRIN A. ANDREWS

was called out of order as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Los Angeles, California, and am a member of the Bar. I have been admitted to practice in the United States Supreme Court, a number of United States courts in different jurisdictions in which I have practiced, and the courts in New York, Hawaii, California and Nevada. I studied law at New York University. I was at one time in the District Attorney's office in Brooklyn, New York, and was also a member of the State Legislature in New York. When I first came to Honolulu I was appointed chairman of the first Board of Registration of the Territory of Hawaii under the first Territorial election for these islands. After that I was appointed Attorney General and later in other positions. I was in the legislature from 1907 to 1921, being elected from the Fourth District. I left the Territory in 1921. I have represented the Territory of Hawaii as Attorney General a number of times in litigations involving the construction of the Organic Act and questions on the United States Constitution. I have likewise represented private interests in presenting cases before the Supreme Court of the United States. I was engaged in private practice in Honolulu.

I guess I knew all the Holt family and almost everybody connected with the Holt family during the time I was in Honolulu. I was very well

(Testimony of Lorrin A. Andrews.)

acquainted with Mr. John D. Holt and knew his daughter Eliza as a girl. I first saw her, to the best of my remembrance, in either 1900 or 1901. I was living at a boarding house owned by Henry Smith, Clerk of this Court, which was next to Mr. Smith's home, and right around the corner from Mr. John D. Holt's house. Through the kindness of Mr. Smith I visited his family a great deal during the evenings. The Holt children would come in to visit and sometimes we would go over to the Holt house. Sometimes I went there personally on the invitation of John D. Holt. I saw Eliza Holt on different occasions. I had occasion to interview Eliza Holt under the following circumstances:

Eliza, as I remember it, had given birth to an illegitimate child, and she charged a white man, named Hall, with having raped her and with being the father of this child. Hall was about to be tried for rape in the Honolulu courts, and Lawrence Kentwell called on me on behalf of his brother—a younger brother who either was a student or just had been a student. Lawrence Kentwell stated that he was told that his brother was about to be mixed up in the matter, and as a result of the conference with the young man I interviewed Eliza.

I can only give you the substance of my talk with Eliza, but I told her that I represented George Kentwell and desired to know whether she was going to implicate him in any way in this Hall mess. When I told her I was representing George Kentwell she talked very freely and said to me that she

(Testimony of Lorrin A. Andrews.)

had testified before the grand jury, I believe under the advice of Annie Kentwell. At the instance or advice of Annie Kentwell she had said that Hall was the only man who had ever been intimate with her and that he was the father of her child. She had fixed the alleged rape at an unfinished house that Hall was building, and had got mixed up in her dates, the house having been finished more than a year before her child was born. She was very much worried over it, as to what would happen to her when she got in court and they confronted her with these witnesses. She wanted to know whether they would put her in jail for having lied, and brought up different things that she wanted advice on. Annie Kentwell said: "Well, Eliza, play lolo; that is all you have got to do." From my conference with Eliza Holt that day, and from my visits in the Holt family, there was no question but that she was perfectly rational.

"Q. That is the way she impressed you?

A. Oh, absolutely. There was no question about it."

I remember that she talked rather slowly, but she was normal for her class and age. I heard her testify in the Hall case, and she was entirely different in court. There she was either very frightened or acting. She was led to the witness stand by either her father, John D. Holt, or Mr. Kinney, her lawyer. They led her on as if she were a little child unable to find her way. I had seen her on

(Testimony of Lorrin A. Andrews.)

other occasions in her home and never before had I seen anyone lead her.

When I saw her in her home she was a girl I should say of about sixteen years old, well developed, wearing long dresses, and had her hair up. On the occasion that she was brought into court by her father or Mr. Kinney, her dresses did not reach her knees and she had two big pigtails hanging down her back.

(The transcript of testimony of Eliza Holt in the Hall trial was received in evidence as Respondent's Exhibit 4, and excerpts from the same appear hereinafter immediately following the testimony of the witness Lorrin A. Andrews.)

Cross Examination.

To the best of my remembrance, the conference with Eliza Holt was not at my law office but at John D. Holt's house. I told John Holt that I wanted to see Eliza. I don't think John Holt stayed, but that I was first alone with Eliza and then Mrs. Kentwell came in. The Hall trial came up in the spring, as I remember, of 1902, and I became Attorney General on February 1, 1903. I interviewed Eliza Holt, it may have been a month or two months before the Hall trial. I was paid for that service by Mr. Lawrence Kentwell. He stated that it was his brother's money and they got an allowance from their father in England.

"Q. How much are you being paid for coming down here to testify?

(Testimony of Lorrin A. Andrews.)

A. My expenses are to be paid and I am to adjust the question of the absolute expenses of my offices with Mr. Castle.

Q. Your expenses are to be paid, and you have no agreement as to the amount of the charge that you make?

A. No, I think between myself and Mr. Castle, why, we would probably both be fair with one another. I am naturally sacrificing considerable time. At the same time I don't like to be paid anything more than my time is worth.

Q. You don't know how much, and you have no agreement as to any specific sum?

A. No specified sum."

I do not know who actually made the charge in the Hall case but I have been endeavoring to give you the background. A charge had been made, and it is my recollection that John D. Holt made the first charge; Annie Kentwell made a charge and backed out, and then John Holt made the charge against Hall. My opinion as to Eliza Holt's mentality is based on the interview I had with Eliza at the John D. Holt home, on what I saw at the trial, and what I knew of the girl before that time. I was a fairly frequent visitor at the John Holt house. John Holt and I were friends, and all of his family were more or less friends of mine. The younger people I had more or less in common with.

(Testimony of Lorrin A. Andrews.)

The impression I got at the trial was that they were trying to create the impression that Eliza was stupid, perhaps so as to evade the statements she made which had proved to be false. I thought she did very well for a girl of her age.

(Respondent's Exhibit 4 is a transcript of the testimony of Eliza Holt in the case of Territory of Hawaii v. John W. Hall, Criminal No. 3205, May 27, 1902, the following being excerpts from such transcript:)

Direct Examination of

ELIZA HOLT,

called as a witness for the prosecution and duly sworn:

By Mr. FINNEY:

Q. What is your answer, did you hear what the gentleman said to you that you would tell the truth?

A. Yes, sir.

Q. What is your answer?

A. Yes.

Q. What is your name?

A. Eliza Holt.

Q. Speak louder, these gentlemen want to hear what you have to say. What was it you said?

(Testimony of Eliza Holt.)

A. Eliza Holt.

Q. Do you know this man sitting next to this gentleman (pointing to defendant Hall) do you know him?

A. Yes.

Q. What is his name?

A. Mr. Hall.

Q. Where did you first see that man?

A. At the Eagle House.

Q. What were you doing at the Eagle House?

A. I went to see my friend.

Q. Who is your friend?

A. Mrs. Hall.

Q. Where is the Eagle House, what street?

A. Nuuanu Street.

Q. On Nuuanu Street. What time of day did you go to Mrs. Hall's, was it in the morning, or at noon or in the afternoon?

A. In the morning.

Q. What did you go there for?

A. My schoolmate asked me to go over sometime.

Q. Your schoolmate asked you to go over sometime, that is Mrs. Hall?

A. Yes.

Q. Where did you meet Mrs. Hall when she told you to come and see her?

A. In the street.

Q. What street?

A. Nuuanu Street.

(Testimony of Eliza Holt.)

Q. Well did you tell anybody at the house that you were going to see Mrs. Hall?

A. No, Mr. Kinney.

Q. Where did you go that morning when you left your home, where did you go?

A. Dr. Wayson's.

Q. To Dr. Wayson's, what did you want to go to Dr. Wayson's for?

A. For my ears.

Q. For your ears. Had you been before that to this doctor?

A. Yes, sir.

Q. When did you get the idea to see your friend, before you left the house or after you got to the doctor's?

A. After the doctor's.

Q. Well did you tell the doctor you were going to see your friend?

A. No, Mr. Kinney.

Q. Well do you go around alone yourself much?

A. No, Mr. Kinney.

Q. Well why did you go to see your friend without telling your people when you left the doctor's and you thought you would go and see this friend of yours; why did you do so without telling your people?

A. I don't remember.

Q. You don't remember. Well you went over to your friend's. Did you find her at home?

(Testimony of Eliza Holt.)

A. Yes, Mr. Kinney.

Q. Was that before or after lunch?

A. Before lunch.

Q. Where did you have your lunch?

A. Up to Mrs. Hall's.

Q. When you went to the house there was Mr. Hall there?

A. No, Mr. Kinney, he came at 12 o'clock.

Q. And before that had you ever seen him?

A. No, Mr. Kinney.

Q. Never at all?

A. No.

Q. Now after lunch what did you do there?

A. I stayed home.

Q. Until how long?

A. Until in the evening.

Q. What time in the evening do you think?

A. I don't know what time.

Q. Was it daylight or dark?

A. Dark.

Q. Where did you have your supper?

Q. Over to Mrs. Hall's.

Q. What were you doing there all day; what did you do there that afternoon?

A. I am doing nothing.

Q. Doing nothing. Well, were you asked by Mr. Hall whether your people knew you were there?

A. No, Mr. Kinney.

Q. Well at dark what happened? You say you stayed there until dark, had supper there?

A. Yes.

(Testimony of Eliza Holt.)

Q. Then what happened; after dark what did you do, did you stay at his house?

A. I don't know.

Q. Well you had your supper there, didn't you?

A. Yes, Mr. Kinney.

Q. Well now after that where did you go, did you go home that night?

A. No, Mr. Kinney.

Q. Did you start home?

A. Yes, Mr. Kinney.

Q. Who was with you?

A. Mr. Hall.

Q. How did you come to go home; did you say you wanted to go home or did Mr. Hall say you wanted to go home or did Mrs. Hall or what?

A. Mrs. Hall wanted me to go home.

Q. Didn't you ask to go home?

A. No, Mr. Kinney.

Q. Well, why not?

A. She told me to go home.

Q. Who told you to go home?

A. Mrs. Hall.

Q. Well didn't you want to—Didn't you tell them you wanted to go home yourself?

A. I don't remember.

Q. Well who took you home or started to take you home?

A. Mr. Hall.

(Testimony of Eliza Holt.)

Q. Which way did you go from the house?

A. Vineyard to Fort.

Q. Vineyard to Fort, and from Fort where did he go with you?

A. The same street.

Q. To where? Then how near home did you get?

A. By the gate.

Q. Which gate?

A. Of John D—of John Holt.

Q. Which John is that?

A. Young John.

Q. Your father?

A. Young John Holt.

Q. Well, the gate on Fort Street or the gate inside by his house or where?

A. By Fort Street.

Q. Right on the street?

A. Yes, Mr. Kinney.

Q. What happened then, why didn't you go inside?

A. I don't remember.

Q. Well where did you go after that?

A. High School.

Q. Who took you to the high school?

A. Mr. Hall.

Q. When you say the high school, where is that?

A. The small high school.

Q. The small high school, on what street is that?

(Testimony of Eliza Holt.)

A. Vineyard street.

Q. Is it on the mauka or makai side?

A. Mauka side.

Q. Was anybody else with you besides Mr. Hall?

A. Nobody else.

Q. Well when you got to the school—to that place did you stay on the street or what?

A. Inside the yard.

Q. Went inside the yard, and what was done there; tell all the gentlemen, don't be afraid. What did he do, what did he do to you?

A. I don't remember.

Q. Is it the big high school or little high school?

A. Little high school.

Q. Where did he take you, up on the ground or the verandah or where?

A. Up on the verandah.

Q. Up on the verandah?

A. Yes, sir.

Q. Well, when you got on the verandah what did he do; what was it that was done on the verandah? Don't be afraid, just tell the gentlemen?

A. Took my drawers off.

Q. Where were you at the time he took your drawers off?

A. On the verandah.

Q. Well, standing up or what?

A. Lying down.

(Testimony of Eliza Holt.)

Q. How did you come to be lying down?
What is that?

A. I don't know.

Q. How was that, just tell the jury? Did he say anything to you? Just tell the gentlemen here, there is nobody that is your enemy, you must not be afraid of anybody; everybody is friendly. Just tell what was done.

A. He said he might kill me.

Q. He said he might kill you?

A. Yes, sir.

Q. Well, did he do anything to you then?

A. Yes, Mr. Kinney.

Q. Had any man before that ever done anything of that kind to you?

A. No, Mr. Kinney.

Q. Did you know anything about——

A. No, Mr. Kinney.

Q. ——— that before?

A. No.

Q. Did you want to do it?

A. No, Mr. Kinney.

Q. Well then why did you do it or let him do it?

A. I don't know.

Q. Did you say anything to him?

A. No, Mr. Kinney.

Mr. DE BOLT: How is that—you did not say anything to him?

A. No.

(Testimony of Eliza Holt.)

Q. After that what did he do then; where did you go from the high school?

A. Go right down to the Eagle House.

Q. Went to the Eagle House?

A. Yes.

Q. Why didn't you go home?

A. He said he would telephone up to my auntie.

Q. Said what?

A. He would telephone up to my auntie.

Q. Did you go back with him to the Eagle House?

A. Yes.

Q. Did he telephone?

A. Went over to—Yes—went over to the telephone.

Q. He went over to the telephone where?

A. Eagle House.

Q. Well was he living at the Eagle House?

A. Big one.

Q. The big Eagle House?

A. Yes.

Q. Why are there more than one house—are they on the same side of the street?

A. Yes.

Q. On the same side, you know what I mean do you?

A. No, Mr. Kinney.

Q. How many houses are there—I will ask you this: Were the Halls living in the big house or small house?

A. Small house.

(Testimony of Eliza Holt.)

Q. And where was the big house?

A. Up mauka side.

Q. Just tell me again.

A. Mauka side.

Q. In a different house?

A. Yes, Mr. Kinney.

Q. Was the telephone in the same house that the Halls were living in, or a different house?

A. A different house.

Q. And he went over and telephoned, did he?

A. Yes.

Q. You don't know whether he telephoned or not?

A. I don't know.

Q. When he came back what did he say?

A. He says nobody is home.

Q. Well where did you stay that night?

A. Over to Mrs. Hall's.

Q. At Mrs. Hall's. And the next morning where did you have your breakfast?

A. Up to Mrs. Hall's.

Q. Who was at the breakfast?

A. The daughter and the wife and myself.

Q. Who?

A. Her daughter.

Q. The doctor?

A. No, daughter.

Q. Was Mr. Hall at breakfast?

A. Yes, Mr. Kinney.

Q. About what time did you have breakfast?

A. Seven o'clock.

(Testimony of Eliza Holt.)

Q. What did you do after breakfast; where did you go?

A. Up to Kewalo.

Q. How did you come to go to Kewalo?

A. He asked his wife first.

Q. He asked his wife first; what did he say to his wife?

A. Told his wife that he would take me out to Kewalo to see his new house.

Q. He told his wife that he would take you out to Kewalo to see his new house?

A. Yes, Mr. Kinney.

Q. Had you asked to see his new house?

A. No, Mr. Kinney.

Q. Did he say anything to you in the morning before you went to Kewalo about your friends or relatives?

A. No, Mr. Kinney.

Q. Or about taking you home?

A. No.

Q. Did you say anything?

A. No, Mr. Kinney.

Q. Well when he said he would take you out to Kewalo what did you do, did you go or not, did you go out to Kewalo?

A. Yes, Mr. Kinney.

Q. Who besides Mr. Hall went with you?

A. The Chinaman was painting the verandah.

Q. Painting the verandah?

(Testimony of Eliza Holt.)

A. Out at Kewalo, yes, Mr. Kinney.

Q. How did you get out there?

A. Tram car.

Q. Where did you get the tram car?

A. Beretania Street.

Q. Then you walked down Nuuanu until you got to Beretania?

A. Yes.

Q. And then caught the car?

A. Yes.

Q. Well now you went out Beretania or King?

A. Beretania, Piikoi and King.

Q. Oh, you got out on Beretania Street and walked down Piikoi?

A. Yes.

Q. Well walked down how far?

A. Well not very far.

Q. Well do you know where King Street is out there?

A. Yes, Mr. Kinney.

Q. Well did you walk down to King Street or past King Street?

A. Walked down to King Street.

Q. To King Street, and when you got to King Street where did you go? Is this house at Kewalo that the Chinaman was painting, is that right on King Street?

A. No.

Q. Is it mauka or makai?

A. Below George Sea's.

(Testimony of Eliza Holt.)

Q. Well what road did you take to go to that place, was it a road towards on the Waikiki side of George Sea's or on the Ewa side?

A. George Sea's going right down.

Q. How is that?

A. A lane going down.

Q. Well, now, which side of George Sea's house is this lane, is it towards Waikiki or towards Ewa?

A. Towards Ewa.

Q. Which is towards Ewa?

A. George Sea's house.

Q. George Sea's house is towards Ewa and the road is towards Waikiki, eh?

A. Yes.

Q. Well when you two went down to the house what did you do when you got to the house?

A. Do the same thing.

Q. Where in the house?

A. In the bath room.

Q. How did you get into the house?

A. Got the keys and opened the door.

Q. Got the keys and opened which door?

A. The front door and the bath room.

Q. The front door leads into what room?

A. The bedroom.

Q. Into a bedroom?

A. And from the bedroom into the bath room.

Q. Did you have to go through the bedroom to get into the bath room?

A. Yes, Mr. Kinney.

Q. Where did he get the keys from?

(Testimony of Eliza Holt.)

A. His pocket.

Q. He had the keys did he?

A. Yes, sir.

Q. And opened the door? When you two got into the bath room what did he do?

A. He took off my drawers.

Q. Was the bath room—the door open or closed?

A. Closed.

Q. Who closed it?

A. Mr. Hall.

Q. Had you ever gone into that house before?

A. No, Mr. Kinney.

Q. Have you been there since?

A. No, Mr. Kinney.

Q. Did you go there with the Grand Jury?

A. Yes, sir.

Q. Did you tell them what rooms there were in that house before you went out?

A. Yes, Mr. Kinney.

Mr. DE BOLT: I object, may it please the Court.

Mr. KINNEY: Before she ever went out there she could name to the grand jury the number of rooms and the location of the rooms and the location of the bath tub in the bath room.

The COURT: I don't think it is competent, what she stated to the Grand Jury. The objection will be sustained and the answer of the witness will be stricken out.

(Testimony of Eliza Holt.)

Mr. KINNEY: Q. Well what kind of paint is it in that bath room?

A. Red.

Q. Red paint, where is the red paint?

A. On the floor.

Q. Is there any bath tub in that room?

A. Yes, sir.

Q. On which side of the bath room is the bath tub?

A. On this side.

Q. What do you mean by this side?

A. The bath room, in this side by the wall.

Q. Is it on the Ewa side of the room or Waikiki side?

A. Waikiki side.

Q. Do you remember whether that bath tub is painted, what color?

A. Painted white.

Q. In what part of the room were you when he took your drawers off of you?

A. In the bath room.

Q. What if anything did you say to him, did you say anything to him?

A. No, Mr. Kinney.

Q. Did you want to do what he—do wrong?

A. No, Mr. Kinney.

Q. Did you want to have intercourse with him?

A. No, Mr. Kinney.

Q. Well, why did you do it?

A. I don't know.

(Testimony of Eliza Holt.)

Q. You don't know. What did he say to you?

A. He said he might kill me.

Q. Did you get any of that paint on your drawers?

A. Yes, Mr. Kinney.

Q. Where?

A. On the back.

Q. Was there any stains on your skirt?

A. Yes.

Q. What was it?

A. Blood.

Q. After he had intercourse with you what did he do?

A. Washed his hands.

Q. Where?

A. Inside the wash basin.

Q. When he did wrong to you where were you, had intercourse with you, where were you?

A. In the bath room.

Q. Standing up or what, when he was doing wrong to you?

A. On the floor.

Q. Well did you cry out?

A. Yes, Mr. Kinney.

Q. Did that make any difference with him, did he stop?

A. Yes, Mr. Kinney.

Q. He stopped. What if anything did he say?

A. The same as that, if I told anybody he will kill me.

Q. Where did this blood come from, did it come from him or from you, or from where?

(Testimony of Eliza Holt.)

A. I don't know.

Q. Well did he hurt you?

A. Yes, Mr. Kinney.

Q. Well how did he hurt you; he did wrong with you did he?

A. Yes, Mr. Kinney.

Q. Well had you ever had sexual intercourse with a man before you had it with Mr. Hall?

A. No, Mr. Kinney.

Q. On these two times?

A. No, Mr. Kinney.

Q. On Vineyard Street and here?

A. No.

Q. Never before?

A. No.

Q. After he was through with you at the house out at Kewalo, what did you do, which way did you go out of the bath room?

A. The back way.

Q. You went the back way, which way did he go?

A. The front way.

Q. Why did you go out the back way?

A. I don't know.

Q. You don't know why you went out the back way?

A. No, Mr. Kinney.

Q. Where did you see him again, you say he went out the front way, and you went out the back way, did you see him again?

(Testimony of Eliza Holt.)

A. Yes, Mr. Kinney.

Q. Where was that?

A. Seen him in front.

Q. Did he say or do anything there?

A. No, Mr. Kinney, he was painting the house.

Q. Who was painting?

A. The Chinaman.

Q. And what was Mr. Hall doing?

A. Nothing.

Q. What is that?

A. Nothing.

Q. Well did you leave there?

A. Yes.

Q. And go where?

A. Mrs. Sea called me in her house.

Q. Does she live a long way or short way from Mr. Hall?

A. A short way.

Q. And how did you get in town, did you walk in or what?

A. On the tram.

Q. Well how about your fare, who paid your fare?

A. Mr. Hall.

Q. Where was that that he paid your fare?

A. Gave me five cents to go home.

Q. Where was he when he gave you the five cents to go home?

A. At his new house.

(Testimony of Eliza Holt.)

Q. This new house that was being painted?

A. Yes, Mr. Kinney.

Q. When was that, before you went into the bath room or after?

A. After.

Q. Did he go with you to go home?

A. He went on another street.

Q. Didn't go the same street with you?

A. No, Mr. Kinney.

Q. Well, where were you when Mr., when Mrs. Sea called you to come in, where were you?

A. Going to catch the car.

Q. Going to catch the car and Mrs. Sea called you in?

A. Yes, Mr. Kinney.

Q. Did you know Mrs. Sea before?

A. Yes.

Q. A long time?

A. Yes, Mr. Kinney.

Q. Now when you got into Mr. Sea's, how long did you stay there?

A. I don't know how long.

Q. Some time, and then where did you go?

A. To catch the car to go back.

Q. To catch the car to go back?

A. Yes.

Q. Did you go alone to the car?

A. Mr. Hall went first, I went after.

Q. Mr. Hall went first and you went after?

A. Yes, Mr. Kinney.

(Testimony of Eliza Holt.)

Q. Well, did he go on the same street?

A. No.

Q. Well, now, when you left Mrs. Sea's, did Mrs. Sea go with you, or anyone else?

A. No.

Q. Is it a long way from Mrs. Sea's to King Street?

A. No, Mr. Kinney.

Q. Well, when you got aboard the car who was on the car?

A. Mr. Hall.

Q. And which way was the car going?

A. To town.

Q. Did Mr. Hall stay on the car all the way coming into town?

A. No, he jumped out at Thomas Square.

Q. At Thomas Square jumped off?

A. Yes.

Q. And where did he go?

A. I don't know.

Q. He jumped off?

A. Yes.

Q. And you went in the car to how far?

A. To Nuuanu.

Q. And when you got to Nuuanu Street where did you go?

A. To Hall's.

Q. What time was it when you got to Hall's.

A. Before eleven.

Q. Well what happened then, why didn't you go home?

(Testimony of Eliza Holt.)

A. Mrs. Hall made me stay there.

Q. Mrs. Hall what?

A. Mrs. Hall made me stay there.

Q. Made you stay there. Well what did you do there?

A. Nothing to do.

Q. Well did anyone come for you before you went home, did anyone come after you?

A. In the afternoon.

Q. Who was it?

A. Lizzie and Annie.

Q. Lizzie who?

A. Lizzie Holt.

Q. And Annie who?

A. Annie Holt.

Q. Do you mean your guardian Annie?

A. Yes.

Q. Did you see her come to the house?

A. No.

Q. Well how do you know she came?

A. Mrs. Hall told me.

Q. Well did you hear any voices?

A. No.

Q. Where were you when she came?

A. Mrs. Hall sent me in the stable.

Q. Sent you in the stable?

A. Yes.

Q. Did you have on your clothes then?

A. No, Mr. Kinney.

Q. Where were your outside clothes?

A. Hanging up on the line.

(Testimony of Eliza Holt.)

Q. Who put them on the line?

A. Mrs. Hall.

Q. What did she want to wash your clothes for?

A. I don't know.

Q. You say there was blood on your dress after you left that place, is that so?

A. Yes, Mr. Kinney.

Q. Where was it on your dress?

A. On the back of the dress.

Q. Do you know whether anyone saw that?

A. No.

Q. Well how did Mrs. Hall come to wash your outside clothes?

A. I don't know.

Q. You don't know. Well where did you have lunch?

A. Mrs. Hall's.

Q. How did you come to get home, who went with you?

A. I went.

Q. You went yourself?

A. Yes.

Q. How did you come to go home?

A. Mrs. Hall told me.

Q. Told you to go home?

A. Yes.

Q. About what time was that?

A. I don't know what time.

(Testimony of Eliza Holt.)

Q. Was it before or after lunch?

A. After lunch.

Q. How long was it after Annie—after you went into the stable?

A. I don't know.

Q. And you went yourself?

A. Mrs. Hall sent me inside the stable to hide.

Q. Mrs. Hall did what?

A. To hide.

Q. To hide. And your clothes were on the line drying at that time?

A. Yes, Mr. Kinney.

Q. Well how soon did you go home after your clothes were dry,—well, did you get your clothes back?

A. Yes, Mr. Kinney.

Q. Well after you got your clothes on what did you do?

A. Went home.

Q. You went home, anyone go with you?

A. No, Mr. Kinney.

Cross Examination of

ELIZA HOLT

By Mr. DE BOLT:

Q. How old are you, Eliza?

A. Sixteen.

Q. You are over sixteen, are you not?

A. Sixteen years.

(Testimony of Eliza Holt.)

Q. How is that?

A. Sixteen years old.

Q. When was your birthday?

A. December 30th.

* * * * *

Q. Now which way did you go?

A. Vineyard and Fort.

Q. Vineyard up to Fort, did you go along Fort Street?

A. Yes.

Q. Which way?

A. Right straight up Fort Street, that big gate.

Q. How is that?

A. Right up Fort Street.

Q. Up where, which way, tell us where?

A. Up to John Holt.

Q. Which John Holt?

A. Young John.

* * * * *

Q. I understand you to say first that you went up Vineyard Street to Fort Street, then you went along Fort Street to John Holt's house?

A. To the gate.

Q. The gate is in front of his house?

A. Further back, near another cottage in front.

Q. Well now what did you do there at the gate, which way did you go? How close is that

(Testimony of Eliza Holt.)

gate to the school house? Now you just watch my question, how close is that gate in front of John Holt's house where you say you and Mr. Hall stopped, to this school house on the corner of School and Fort Street?

A. I don't know how far the gate is.

Q. Well not very far, is it?

A. No.

Q. Now didn't you go into the house and Mr. Hall wait outside?

A. No.

Q. Well what did you do, which way did you go? Now when you got to that gate what did you do?

A. I don't remember.

Q. Don't remember. Well where did you next go? You don't remember where you next went?

A. No.

Mr. KINNEY: You need not worry about the baby, the baby is all right.

Mr. DE BOLT: Is your baby outside?

A. Yes.

Q. Mr. Hall is not the father of that baby is he?

A. I don't know.

Q. Don't you know that Mr. Kentwell is the father of that baby?

A. Yes.

Q. He is the father of the baby?

(Testimony of Eliza Holt.)

A. Yes.

Q. Have you talked with Mr. Kentwell about this case?

A. No.

Q. Have you seen him?

A. No.

Q. Have you talked to anybody about this case?

A. No.

Q. Now what do you call that school on the corner of Fort and School Street, what is the name of that school?

A. The Normal school.

Q. Now this gate that you speak of where you and Mr. Hall went to, is close to the Normal School is it not?

A. No, John Holt's gate further down.

Q. Do you know where Henry Smith lives?

A. Yes.

Q. Now in going to this gate from Vineyard Street did you pass along by his place?

A. Yes.

Q. And went on up Fort Street?

A. Yes.

Q. Do you know where Smith's lane is leading off Fort Street?

A. Yes.

Q. You passed up by that and went to Mr. Holt's gate?

(Testimony of Eliza Holt.)

A. Holt's lane.

Q. Where is that, tell us where it is?

A. It is near the big gate the right end, two houses in front.

* * * * *

Q. What did Mr. Hall do there at the lane?
You don't remember?

A. No.

Q. Well you went away from there didn't you?

A. Yes.

Q. Well where did you go?

A. Right straight down Fort Street.

* * * * *

Mr. DE BOLT: Don't you know where you went after you got up to that lane?

A. No.

Q. You don't know?

A. No.

Q. Well that is a long ways from the high school is it not?

A. Not very long.

Q. But it is much further from the high school than it would be from the Normal School; the Normal School was much closer was it not?

A. Yes.

Q. Very much closer was it not?

A. Yes.

(Testimony of Eliza Holt.)

Q. And you were also much closer to your father's house at that time than you were to the high school, were you not?

A. No.

Q. And so it was further from the high school than it was to your father's house when you were there at the Lane, was it not closer to your father's house than it was to the high school?

A. I don't know.

Q. Don't you know that it was closer?

A. I can't.

Q. What is that?

A. I can't.

Q. You don't know. Now you know it is wrong to have sexual intercourse with a man until you get married to him?

A. I don't know anything about that.

Q. You don't know about that?

A. No.

Q. Do you think it is right?

A. No, sir.

Q. You don't think it is right. Well then you know that it is wrong, don't you; you know that it is wrong to have sexual intercourse with a man, don't you?

A. I don't know.

Q. You don't know.

A. No.

Q. When was the first time that you mentioned this matter of having sexual intercourse to any person?

(Testimony of Eliza Holt.)

Mr. KINNEY: Speak up louder.

A. I don't know.

Mr. DE BOLT: You don't know. Now you say that you don't want to have sexual intercourse, why, because it was wrong?

A. I don't know anything.

Q. What is that?

A. I don't know anything.

Q. You don't like to have me ask you these questions do you? I say you don't like to have me ask you these questions, is that true?

(No answer.)

Q. After you came back to the Eagle House you say that Mr. Hall went over to the telephone to telephone to your people?

A. Yes.

Q. You knew that this case was coming on for trial today?

A. Yes.

Q. Have you talked with anybody about the case?

A. No.

Q. Have you told a single soul?

A. No.

Q. Nobody?

A. No.

Q. You are sure you have not told anyone?

A. Not anybody.

Q. Well, how did they know or how did anybody know that you knew anything about it?

A. I don't know.

(Testimony of Eliza Holt.)

Q. It is a perfect mystery to you, is it not; you don't understand why you were called here do you? Do you know why you are called here?

A. No.

Q. You don't?

A. No.

Q. Do you know how this case concerns Mr. Hall? What has it to do with Mr. Hall, is it not because Mr. Hall is the father of your child, is it?

(No answer.)

Q. Kentwell is the father of your child, is he?

A. I don't know.

Q. What is that?

A. I don't know.

Q. Well, didn't you just a little while ago tell me that he was? Are you tired?

A. Yes.

Q. Now you answer my questions right along and we will soon get through. I don't want to ask you anything that will hurt you at all; just simply want to get at the truth. Now Mr. Hall did not use you rough or anything of the kind, did he, Mr. Hall did not hurt you?

A. No.

Q. No of course he didn't. He didn't intend to hurt you did he?

A. No.

Q. You knew that, didn't you?

A. Yes.

(Testimony of Eliza Holt.)

Q. Certainly you did. He was perfectly kind and gentle to you, was he not, he didn't try to hurt you, did he?

A. No.

Q. Why of course not. Now can't you after thinking tell me where you went after you got up to the lane, John Holt's lane as you call it, can't you tell me where you went from there; did you go right back to the Eagle House?

A. Yes.

* * * * *

Q. Now when you got up to Fort Street did you stop, both of you stop right there?

A. Yes.

Q. Why did you stop, there must have been some reason for it, was there not?

A. I don't know.

Q. What is that?

A. I don't know.

Q. But you did; you both stopped right there?

A. Yes.

Q. Did you stand there and talk? What did he say to you when you got there to the entrance to Holt's lane; do you remember what he said to you?

A. No.

Q. Now, Eliza, why don't you answer my questions? You answered Mr. Kinney right along.

Mr. KINNEY: I don't think that is hardly fair. I remember experiencing difficulty.

* * * * *

(Testimony of Eliza Holt.)

Q. All right, now you tell me the truth. Now what did you and Mr. Hall talk about when you reached the lane there, if anything, do you remember?

A. I don't remember.

Q. Well can you remember whether or not you talked at all or is it simply you don't remember what you said, is that it?

A. Yes.

Q. You remember that you did talk?

A. Yes.

Q. But you cannot remember what you said?

A. Yes.

Q. But you are sure you did talk?

A. Yes.

Q. How long did you and Mr. Hall stand there and talk?

A. Quite a while.

Q. What is that?

A. Quite a while.

Q. What do you mean by that, ten minutes or fifteen minutes?

A. Ten minutes.

* * * * *

Q. How did you get into the high school grounds, what place did you go in, did you climb over the fence or go through a gate?

A. Through a gate.

Q. Where was the gate?

A. On this side.

Q. On Vineyard Street?

A. Yes.

(Testimony of Eliza Holt.)

Q. Why did you go to the high school, why did you go up there?

(No answer.)

Q. Don't you know?

A. No.

Q. All right. Now we will go back to the lane, on Fort Street, again. Now when you started home you started to your home that night, did you not?

A. Yes.

Q. Now you knew when you were at the entrance of that lane you were not at home did you not, you knew that did you not?

A. Yes.

Q. Why did you not go on home? Why did you not go on home, why did you turn and come back down Fort Street, do you know why?

A. No.

Q. Why did you go to the high school?

A. Mr. Hall took me there.

Q. Where is that gate on Fort Street leading into the high school?

A. Mauka side.

Q. On the mauka side. There is a stone wall there, is there not?

A. No, no stone wall, only a fence.

Q. There was trees and bushes all around in the yard, was there not?

A. Banana trees.

(Testimony of Eliza Holt.)

Q. Other trees too, was there not?

A. Yes.

* * * * *

A JUROR: Can we know the native phrase for that.

Mr. DE BOLT: Do you understand the native language?

A. I understand a little.

Mr. KINNEY: You know what mea kalohi is, don't you?

A. Yes.

Q. You have heard people speak about mea kalohi?

A. Yes.

Q. Between a man and a woman?

A. Yes.

Mr. DE BOLT: Now that means sexual intercourse, don't it?

A. Yes.

Q. You know that, don't you?

A. Yes.

Q. Well then when you told me a while ago, that you didn't know what sexual intercourse meant, you didn't say what you intended to say, did you?

A. No.

Q. Now is it right or is it wrong to have sexual intercourse?

A. Wrong.

Q. You knew it was wrong, didn't you?

A. Yes.

* * * * *

(Testimony of Eliza Holt.)

Q. After it was all over with, all pau, and you got up from the floor, did he say he would do something to you if you told it then?

A. He might kill me.

Q. He might kill you, that was after it was all pau?

A. Yes.

Q. Just give me his exact words, how did he say that?

A. He said I must not tell anybody.

* * * * *

A JUROR: May it please the Court, I would ask that Mr. Kinney repeat that native.

Mr. KINNEY: Hui kalohi.

Mr. DE BOLT: Did you hear what Mr. Kinney said?

A. Man and woman.

Q. You understand what that means?

A. Man and woman.

Q. Having sexual intercourse together?

A. Yes.

Q. How long have you known that word?

A. I don't know.

Q. A long time, have you, a long time?

A. Yes.

Q. Ever since you were a little girl of eight or nine or ten years old?

A. Nine.

Q. Ever since you were nine years old, who told you, where did you learn it?

A. I heard the native of it.

(Testimony of Eliza Holt.)

Q. You heard the native?

A. Yes.

Q. Did you talk the native?

A. Yes.

Q. Not very good?

A. No, I understand a little bit.

Q. Can you carry on a conversation with a native?

A. No.

* * * * *

Q. You like to get up early do you?

A. I always get up early mornings.

Q. You always get up early and you think it was about seven when you started out there?

A. About seven, after breakfast.

Q. Oh, you had breakfast at seven. I am talking about what time did you leave the house to go out to the new house?

A. Half-past seven.

* * * * *

Q. Did you tell any of them what had taken place?

A. I did not.

Q. You did not?

A. No.

Q. Made no complaint?

A. No.

Q. Why didn't you tell them, were you ashamed, ashamed to tell them?

A. I was scared.

Q. You were ashamed were you not?

(Testimony of Eliza Holt.)

A. Yes.

Q. Why didn't you tell them?

A. I was ashamed.

Q. Now you know George Kentwell, the brother to your guardian's husband?

A. Yes.

Q. You saw him out there, did you not?

A. He stayed there too.

Q. Oh, you stayed at the same place. Well, that is where you and he had sexual intercourse is it not?

A. Yes.

Q. At whose house, at whose house?

A. Mrs. Kentwell's.

Q. Well when did you go back to your father's house here on School Street, two or three months after that or three or four months? Well you were back at your father's house in February, were you not?

A. In February.

Q. You remember that?

A. Yes.

Q. Well you knew at that time—you knew before that time didn't you that you were with child and that you were going to have a baby?

A. Yes.

Q. You knew it?

A. Yes.

Q. But you had not told anybody?

A. No.

(Testimony of Eliza Holt.)

Q. Told no one?

A. No.

Q. Who first spoke to you about it, asked you if you were going to have a baby, was it your father, was it your auntie, or was it your cousin?

A. My auntie.

* * * * *

Q. Did she ask you who the father of the child was? Didn't she ask you who you had sexual intercourse with? Tell me what she said. What else did she ask you?

(No answer.)

Q. Well what did you say? You felt ashamed—did you not, you didn't want to tell her—Did you feel ashamed?

A. Yes.

* * * * *

Q. That was in February, was it, when you had this talk with your auntie when she asked you who the father of the child was?

A. No, it was in April.

Q. What was in April, tell me? Speak right out and tell me what took place in April?

A. My auntie asked me who is the father of the baby was in April.

Q. Is that before the baby was born or after the baby was born?

A. After it was born.

Q. Then you told her that Kentwell was the father of the baby?

A. Yes.

(Testimony of Eliza Holt.)

Q. Didn't you first say that Mr. Hall was the father of the baby?

A. Yes.

Q. You first said that he was the father of the baby?

A. Yes.

Q. And you didn't say anything about Kentwell first, you didn't tell them anything about Kentwell?

A. No.

Q. Why didn't you tell them about Kentwell in the first place? You didn't want Kentwell to have any trouble, did you? You didn't want to make any pilikia for Kentwell, is that it?

A. I don't know.

Q. Didn't want to make him any trouble, is that right, just tell me?

(No answer.)

* * * * *

Q. Eliza, you say you studied arithmetic during that seven years that you were at school?

A. Yes.

Q. Well now what do seven and five added together, what do they mean? Supposing you had seven apples and I hand you five more how many apples would you have, don't you know?

(No answer. Witness nods her head "no".)

Q. Do you know what five times four is, how much that would make, five times four, don't you know?

(No answer.)

(Testimony of Eliza Holt.)

Mr. DE BOLT: Supposing you have two apples Eliza and I gave you two more, how many would you then have?

(No answer.)

Q. How many fingers have you on one hand?

A. Five (after looking at hand).

Q. How many on the other hand?

A. Five (after looking at hand).

Q. How many on both hands?

A. Ten.

Q. If you had seven fingers on one hand and only five on the other, how many fingers would you then have?

The COURT: Don't you know, Eliza?

A. No.

Q. You don't know how many you would have then?

A. No.

Mr. DE BOLT: Try and think then about it and see if you cannot decide if you had seven fingers on one hand and only five on the other, how many would you have on the other? Just think about it, count it up?

(No answer.)

Q. Did you use a slate when you were at school and blackboard too?

A. Yes, blackboard.

Q. What did you make on the blackboard, figures?

A. Yes.

(Testimony of Eliza Holt.)

Q. And letters?

A. Yes.

Q. You would write words on the black-board?

A. Yes.

Q. What did you make figures on the black-board for?

(No answer.)

The

DEPOSITION OF MRS. ANNIE HOLT
KENTWELL,

taken November 5, 1928 on behalf of Petitioner in England, pursuant to open commission, was read into the record as follows:

Direct Examination.

I was born in 1881, and am the wife of Lawrence K. Kentwell. I have known Eliza Holt Christian all my life. She was born in 1885. She went to a board school at the Convent of the Sacred Heart for about six years. She was very childish at this time. Whenever she did anything naughty I would frighten her with a large placard, and she would run away screaming. During her vacations she would come home and live with me. In 1900 I went with Eliza Holt to the Notre Dame Convent in California. I suggested to Eliza's father that she go to school with me, so I was appointed her guardian for her as a minor. I should think she was sixteen or seventeen at the time. Mr. John D. Holt suggested

(Deposition of Mrs. Annie Holt Kentwell.)

that I be made the guardian. She was so childish in her ways. On the way up to California I had to have extra care to watch her. She was climbing on the rails. I was always afraid she would fall off. She had no idea of danger. At that particular time I had a very difficult time with her as to her cleanliness and had to keep my eye on her to watch her all the time as I am doing now at present. At Notre Dame she was put in the very first grade with children of six or seven, although she was then fourteen or fifteen. At Notre Dame School she did not progress beyond the same form that she first entered. She did not seem to improve there. She could not read nor write. She could not make simple computations in addition or subtraction. I know this from my own experience, having seen her try in the class, although I tried to help her. We were there together for about a year. She was no better at the end of the year than at first. In matters of personal cleanliness she did not improve.

I was married to Lawrence Kentwell in 1901 and went out to live at Waikiki. I remember the Hall trial and that I attended the same, and I remember when Mrs. Christian married Albert Christian after the Hall case. She lived with Christian for about six months and then came to my house at Waikiki where I was living, and also Mr. John D. Holt. She lived with her husband about six months, then she came to my house, having run away from home. He did not come with her. I had no occasion to

(Deposition of Mrs. Annie Holt Kentwell.)

observe her with her child. She could not care for it so it was given away and adopted by the Seas. I remember hearing Mrs. Christian testify on the witness stand at the Hall trial. At that trial I remember questions being put to her asking her to make simple computations, which she was not able to make. In September of the same year in which she came out from San Jose I brought proceedings, as a relative and friend, and tried to annul the marriage. Eliza was still a minor at that time. Thereafter she lived with me all the time until we left Hawaii.

We left Honolulu about September 4, 1906. Eliza came with us, on the suggestion of John D. Holt and my husband. Before we left Hawaii the matter of what was to be done about Eliza and her father was taken up in my home. I did not want her to come with us, but it was a case of two against one.

(Witness was then shown a copy of a document dated August 31, 1906, in which Eliza Holt Christian assigns to Annie Holt Kentwell all of her interest in a certain lease dated March 17, 1905 (Exhibit A-8), and certain rents and profits, after the death of her father, in consideration for which Annie Kentwell agrees to support and maintain Eliza Christian for the remainder of her life.)

WITNESS RESUMES: I do not remember having signed that document but I may have signed it. I was ill and my husband was winding up our affairs. He never called my attention to the fact

(Deposition of Mrs. Annie Holt Kentwell.)

that among the papers I was signing there was a paper whereby she conveyed this property to me and I agreed to support her for the rest of her life. I remember signing several papers and I trusted him implicitly.

(The document referred to was thereupon received in evidence without objection, in connection with the deposition of Annie Holt Kentwell, but, to avoid duplication, bears the exhibit number throughout the trial of 2-G, and is a document cancellation of which is prayed for.)

Witness was thereupon shown a certified copy of another document dated August 31, 1906, Eliza R. P. Christian, Lessor, to Annie Holt Kentwell, Lessee, the document being a lease of the Lessor's interest in the lands of Makaha for a term of fifteen years from and after the death of John D. Holt; consideration \$250 net per annum, beginning on the death of said John D. Holt. The document was executed by Eliza R. P. Christian and Annie Holt Kentwell, in the presence of John D. Holt; the acknowledgments were taken by N. Fernandez, a notary public of the First Judicial Circuit, Territory of Hawaii, and the document was duly recorded in the Hawaiian Registry of Conveyances. The document was received in evidence without objection as Petitioner's Exhibit 2, in connection with the deposition of Annie Kentwell.)

WITNESS RESUMES: I may have signed the foregoing document also, but I don't remember it.

(Deposition of Mrs. Annie Holt Kentwell.)

My husband did not tell me that among other papers I was signing there was one whereby Eliza purported to lease, after the death of her father, her Waianae property for a period of fifteen years. I did not have any personal banking account after my marriage, and all moneys coming to me were put into my husband's account. We sailed from Honolulu September 3 or 4, 1906, and went to Boston for about six months, from which place ~~we~~ went to New Jersey.

(Witness was thereupon shown a certified copy of a document executed under date of June 14, 1907, by which witness conveys to May K. Brown, of Honolulu, certain interests of witness at Makaha, namely, her interest in lands at Makaha; her rights in a lease from W. A. Aldrich, Executor of the Estate of Robert W. Holt, Deceased, to John D. Holt, dated November 22, 1862; her rights in a lease made by Eliza R. P. Christian to Annie Holt Kentwell dated August 31, 1906 (Exhibit 2); her rights to a lease made by John D. Holt to Annie Holt Kentwell dated September 13, 1900; and her rights to a lease made by John D. Holt, Jr. to Annie Holt Kentwell dated January 1, 1901, in consideration of \$500. This document was executed by Annie Holt Kentwell, L. K. Kentwell and Eliza R. P. Christian, the joinder of L. K. Kentwell and Eliza R. P. Christian being by way of consent. The acknowledgments of the parties named were taken in New York City on June 14, 1907, before E. L. Barnard, a notary public. The document was thereupon received in evi-

(Deposition of Mrs. Annie Holt Kentwell.)
dence, without objection, as Petitioner's Exhibit 3, in connection with the deposition of Annie Kentwell, but is set forth more fully in connection with the deposition of E. L. Barnard, called as a witness for Respondent, and bears the designation throughout the trial, to avoid duplication, of Exhibit 14-B. The document was duly recorded in the Hawaiian Registry of Conveyances.)

WITNESS RESUMES: I remember/selling my interests in Makaha and I did sign my name and gave the deeds to my husband, but I don't remember about Mrs. Christian. I think this was signed in New Jersey, although I have a faint recollection that I went to New York with Mrs. Christian and my husband. My husband handled the transaction entirely. I don't remember about the \$500. At that time I had no personal banking account in New Jersey or elsewhere. Any moneys which I may have received were turned over to my husband's account.

(Witness was thereupon shown a document dated June 14, 1907, Eliza R. P. Christian to May K. Brown, being an option to purchase Eliza R. P. Christian's contingent interest in the Ahupuaa of Makaha. This document was executed and acknowledged by Eliza R. P. Christian before E. L. Barnard, a notary public in the City of New York. This document was offered by Petitioner as an exhibit in connection with the deposition of Annie Kentwell and was received as such exhibit without objection. It is, however, more fully set forth in connection with the deposition of E. L. Barnard and

(Deposition of Mrs. Annie Holt Kentwell.)

bears the designation during the trial, to avoid duplication, of Exhibit 14-A. The document was duly recorded in the Hawaiian Registry of Conveyances.)

WITNESS RESUMES: I have no recollection of this document nor whether Mrs. Christian signed. So far as I know, Eliza R. P. Christian had no banking account at any time while we were in New Jersey, nor did she ever execute any checks or deposit any money in any banks in New Jersey or elsewhere. In all my experience with her I have never known her to have a banking account anywhere. So far as I know, Eliza Christian herself did not have in her possession any sum of \$2500 received by her personally. In New Jersey there was no change whatever in her ability to take care of herself.

Eliza's second illegitimate child was born January 1, 1909. This child died two or three months after its birth. I don't remember the name of the hospital she went to, but it was in the City of New York. I was unable to ascertain from Eliza anything concerning the paternity of the child. I tried to find out but could not. None of us were able to discover its paternity. This child lived for two or three months and was never brought back to our home, but Eliza remained with the child at the hospital in New York. In June 1909 we all came to England and stayed at first with a Mrs. White at 24 Leckford Road, Oxford; then, after that, and on July 5, 1909, to our present address. She has made her home there ever since.

(Deposition of Mrs. Annie Holt Kentwell.)

I remember Mr. David Withington calling at our home in Oxford during the month of May, 1916. I was out when he first came, but when I got home about 12:30 he was talking to Mr. John D. Holt. My husband came in later, and we all, including Mr. Withington, had lunch, together with Mrs. Christian. The latter did not say anything at all during luncheon. My husband and Mr. Holt were talking to Mr. Withington who said he had been sent over by Mr. James L. Holt to buy Mrs. Christian's interest in Waialua. The sum of \$30,000 was mentioned, but Mr. Withington did not address his remarks to Mrs. Christian. She said nothing. Mr. Withington did not speak about the sale to her. After luncheon I went upstairs and the three men went into the study, Mrs. Christian going out with the children. I next saw Mr. Withington when I had come downstairs after my rest. I went into the study. It was just before tea. Before this I had not been aware of Mrs. Christian conveying any of her properties away. When I came down from upstairs I said to Mr. Withington, "She is non compos mentis." Mr. Withington said, "I know it is all right we are taking the risk." Then my husband spoke up and said to me, "It is all right, dear, leave it to me," to which I replied that if that was the case I should leave it to him. It was suggested that we should meet Mr. Withington in London the next day, and I was told to sign the deed as being one of the family. I had no idea why I signed, because my husband attended to everything. Mr. Holt, Mrs.

(Deposition of Mrs. Annie Holt Kentwell.)

Christian, my husband and myself went to the American Consulate in London.

(Witness was thereupon shown a copy of a document executed under date of May 2, 1910, signed by John D. Holt, Eliza R. P. Christian, Annie Holt Kentwell, Lawrence K. Kentwell, and Albert Christian, conveying to James Lawrence Holt, in consideration of \$35,000, certain interests set forth in the deed, which is a document cancellation of which is prayed for in this case, and which document is set forth in full as an exhibit to the petition and in the list of documents hereinbefore set forth. The document was received in evidence without objection in connection with the deposition of Annie Kentwell, but throughout the trial, to avoid duplication, it bears the designation Exhibit A-21.)

WITNESS RESUMES: I was told to come over and sign because I was one of the family. I had no idea of why I was to sign because my husband saw to everything. I know that I conveyed my interests in Waialua to J. R. Galt in Honolulu in 1904 or 1905. The deed, Exhibit A-21, was never read to me before I signed it, and to the best of my knowledge it was not read to Mrs. Christian nor to John D. Holt before it was signed, but my husband looked it over and passed it over to us to sign. I signed as Annie, instead of Annie, because I was so designated in the document. I remember John D. Holt, Mrs. Christian, and my husband signing. I think Mr. Withington gave the check to my husband but I am not quite sure; he may have given it to Mr.

(Deposition of Mrs. Annie Holt Kentwell.)

Holt. I do not remember whether there was more than one check. At that time and until my husband left me and went away I never had a personal banking account in Oxford, London, or anywhere, but left the matter entirely to him. Any moneys which came to me from properties in Hawaii or elsewhere I endorsed the checks therefor and turned them over to my husband. I may have endorsed a check at this time but don't remember, nor do I remember whether I received any money after this transaction. Eliza Holt Christian at that time had no banking account in Oxford or anywhere. So far as my knowledge goes, she did not receive any sum of money at that time personally. Since that time, so far as my knowledge goes, she has had no sum of money since the execution of the document. I have made every effort to ascertain whether any sum of money commensurate with the money designated in the deed of May 2, 1910 was placed to the account of my husband here in Oxford. I even went to see Mr. Bennett, the Manager of the Bank, and he refused to give me the information.

I remember Mr. Henry Holmes calling in May, I think, of 1912. I did not see him until the next day, when he and Mrs. Holmes came to tea in the garden. Mrs. Christian was there but sat with the children. I think we next went to the Randolph Hotel in Oxford, where Mrs. Christian, Mr. and Mrs. Holmes and I had dinner together. Mrs. Christian did not say anything at the table, nor did Mr. Holmes talk to her.

(Deposition of Mrs. Annie Holt Kentwell.)

I saw Mr. Holmes the next day and took Mr. and Mrs. Holmes around to see the colleges. Mrs. Christian was not present. I think next we went to the American Consulate in London. I think Mrs. Christian signed a paper there. The negotiations were between my husband, Mr. Holmes and Mr. Holt. So far as I know, Eliza Christian did not herself receive any sum of \$7500, or any other amount at that time, nor at that time did she have any banking account, nor had she any moneys kept in any other place or in any other way.

I remember the birth of Mrs. Christian's third illegitimate child in October of 1915. Relative to taking care of her, in the matter of having that child born, I had her examined by Dr. Good. She was then sent to London and the child was born in a Home in London. The child is now with the Nazareth Sisters in Oxford. I do not know who the father of the child was, and could not find out. I tried to find out the paternity of the child from Eliza but did not succeed.

My husband first left Oxford in 1917, going to China; then he returned to join up in the War, being with the army until the armistice was signed. He was invalided after that and came back and stayed until 1919 when he went out to China again, going to Shanghai. I have not seen him since. When he left, he left with me whatever money was necessary for family expenses. He left no money with me for Mrs. Christian. I don't know just where he is in China as I have not heard from him since May.

(Deposition of Mrs. Annie Holt Kentwell.)

Moneys, however, are sent to me every month, coming by check through the Bank in London. The information that I tried to get as to my husband's bank deposit in 1910 was from Mr. Bennett in Lloyd's Bank in Oxford.

I remember the fact that Eliza Christian executed a power of attorney to Henry Smith of Honolulu in 1924. Mr. Smith wrote that in order to get money from the Hawaiian Trust Company he must have a power of attorney from Mrs. Christian. The power was sent to me here, Mrs. Christian signed, and I procured her signature at the suggestion of Mr. Henry Smith, and we sent it back to Mr. Smith. This was just after the death of John D. Holt. I knew nothing about the power of an incompetent to execute a power of attorney, and I had her sign this power because Mr. Smith wrote and told me to do so. The small income she was getting from the Trust Company was sent to me.

I remember the call upon me by Dr. Douglas. He called once and Mrs. Christian was out. He called a second time but he insisted upon seeing Mrs. Christian, so I called her down. She had influenza at the time. Mrs. Christian, Dr. Douglas and I were present. Mrs. Christian said her husband was out in Honolulu and that he had been very cruel to her. I was the one who informed Dr. Douglas of Mrs. Christian's family history. Out side of the information given him by her about her husband being cruel to her, she gave him no other information, not to my knowledge. I gave Dr. Douglas all the information

(Deposition of Mrs. Annie Holt Kentwell.)

I could. I think Dr. Douglas was with us for about ten minutes.

When Mrs. Christian's father died she showed no signs whatever, and did not seem to realize her father was dead. If she had she would have shed tears. When Mr. Holt died he left no property to Eliza that I know of and made no provision for her. Before he died and during his lifetime he set aside no money for her, to the best of my knowledge, and since he died I have been unable to find any properties of his, in England or elsewhere. To the best of my knowledge, Mrs. Christian has no property either in moneys, in a bank, or kept for her in any way or in her possession.

The deed of May 2, 1910 called for \$35,000, but to my knowledge I never received the \$5,000. Of the \$35,000 recited as having been paid, Mrs. Christian, to the best of my knowledge, never received that sum or any portion thereof. The only time I put money in the bank was when I turned it over to my husband. If I had gotten the \$5,000 I would know about it and I never got it. Mrs. Christian could only sign her name. She is able to write with the help of others. I have seen her write a letter with her father, her father dictating the letter and Mrs. Christian trying to write it. This took a long time because Mr. Holt could not see and Mrs. Christian could not spell. Mr. Holt's eyes were weak, he was short-sighted; he had only one eye to begin with. He would spell the words for her and she would write them, little words. If he wanted to write a letter, especially to James L. Holt, he would ask

(Deposition of Mrs. Annie Holt Kentwell.)

Mrs. Christian to write, with his help. I remember seeing his on only one occasion.

Mrs. Christian could not care for herself. I had to attend to her clothes and especially make a point that she dressed properly to go to London. She has never been able to make the right change. When a thing has cost about nine pence she has put down two shillings and not known whether she would have change or not. She has given the whole change to the shopkeeper. She has gone up to her room on a cold day, with the windows open, not knowing any better, although she would have a gas stove in her room but would not light it. She has always been fond of eating, would eat as much as possible and then be sick. She would go up to her room and rest and be better. The next day she would come down and eat again with the same result. I heard the testimony of one of the witnesses about her being at his home for about a fortnight, and I remember the incident. We tried to find her but could not. We informed the police, and eventually my old maid, Mrs. Lambert, came up to tell us about it, which is how we discovered where she was.

She collects various odds and ends. She cuts out pictures from the newspapers—anything she fancies; for example, anything connected with men, football players, and so on. She cannot sew, and I have to induce her to take baths. I have had to bribe her to take her baths with apples or oranges. She has given me presents, such as pencils and faded flowers,

(Deposition of Mrs. Annie Holt Kentwell.)
in a most serious way, as a real present. If she was going to London I would make it specially a point to see that she was dressed properly. She loses her pocketbook. She has been into town and lost her purse and come back without it. She will go into a rage over nothing. I have seen her go to bed with all her clothes on and sleep there that way all night. She would come down in the morning in a most dilapidated condition. I have never heard Mrs. Christian use a Hawaiian word, except once when Mr. Goodale called and said "anuana" to her, to which she simply laughed and smiled. No language but the English language has ever been spoken in my home. In all schools that Eliza went to the instruction was in English. I have never heard her father speak to her in Hawaiian. In cooking, she tries to do her best but can't cook. She can't read. I have seen her try. The words which she read were simply words that a child would understand. In all the time I have known Mrs. Christian since early childhood she has always been the same.

Cross Examination

Eliza lived the early years of her life with her father at Makaha. I don't remember her mother's name and I never saw the mother. I used to go down to Makaha for the holidays, at Christmas, Easter and during the summer holidays. I am not living with Mr. Kentwell now because he is away; there is no separation or any trouble, but he has

(Reposition of Mrs. Annie Holt Kentwell.)

not been able to return. At the time of my marriage to Mr. Kentwell I think he was in a company of some sort—"the Hawaiian something." In 1905 he went to Columbia University for a year and then came back; then we left for the mainland in September 1906.

Regarding the two documents which have been shown me, both dated August 31, 1906, I expect the Eliza R. P. Christian there mentioned is the Eliza R. P. Christian in this case and the Annie Holt Kentwell is myself. I do not know where the document was executed and don't remember whether it was in my own house or not. I was taken ill about that time and my husband was getting all our things together. I think I knew Mr. Nagan Fernandez, although I don't know his business, and I don't remember his taking my acknowledgments to these papers. I don't remember whether the deed was signed in the presence of John D. Holt or whether Eliza Christian signed. I have no recollection whatsoever about that. My husband asked me to sign it. I may have signed it; my signature is there, so I must have signed it, but I don't remember when I did it.

My testimony is the same as to both documents dated August 31, 1906. I don't remember signing a lease to the Waialua Company on March 17, 1905. I sold my interest in the Holt lands at Waialua to Mr. Galt, I think in 1905. I think the Maturity Company had something to do with it as well. That

(Deposition of Mrs. Annie Holt Kentwell.)

is my faint recollection. If you (referring to counsel) suggest to me that the sum of \$6,000 was the price, it must be right. Any money paid must have been paid to my husband. I had implicit faith in my husband. He attended to all business transactions. As far as any money transaction was concerned, my husband attended to it, and if he did attend to it, it was quite all right. I don't know anything about the other papers signed in New York or New Jersey, nor anything about a lease to the Waialua Plantation.

I remember signing deeds which my husband asked me to, but I have no recollection of this money for which I may have signed receipts. My husband had the check and I may have signed it. If receipts are produced signed "Annie Kentwell" they would be mine.

When we first came to the mainland we lived in Cambridge, somewhere by Harvard University but I don't remember the name of the street. My husband did not go to college at Harvard but we went down to Elizabeth, New Jersey, while he attended Columbia.

In regard to the two documents executed in June 1907, I don't remember whether I executed them in New York or New Jersey. I remember selling my interest to May K. Brown, and I think this was in New Jersey, but I am not sure. I don't remember anything about those two documents. I know we went to New York on one occasion, but I can't re-

(Deposition of Mrs. Annie Holt Kentwell.)

member whether that was the time. I don't remember signing anything at all. Although I remember selling my interest to May K. Brown, I don't remember the \$500. If the money was paid to my husband it would be all right. Moneys have always come into my husband's account. The only time I can remember I had an account of my own was when my husband went to China. I don't remember signing other documents in New Jersey but if my signature is there, I will admit it. I don't remember Eliza Christian having sold her interest in Makaha. The family may have spoken about it but it is so long ago I don't remember.

When Mr. Withington came to the house I had never heard about any possible sale of the interests in the Holt lands at Waialua before.

I have seen John D. Holt write to James L. Holt through Eliza but I did not read the letter. I knew he used to write to James L. Holt. Eliza sat there and Mr. Holt spelled the words. It took hours to do it. This was the only occasion I saw Mr. Holt dictate a letter to Mrs. Christian. I happened to go into the room, that is how I saw them write.

(Counsel exhibited to witness a copy of a letter dated March 8, 1910, Lawrence Kentwell to James L. Holt, later received in evidence as Exhibit D-6, and referred witness to the first sentence which reads: "Liza and I have just got your letter, and after a long consultation with Annie and Uncle John, they have concluded to sell for \$30,000" and asked witness to refresh her recollection as to

(Deposition of Mrs. Annie Holt Kentwell.)

whether she had ever heard the Waialua matter discussed.)

WITNESS RESUMES: I am sorry I know nothing about it and I never had any talk with my husband like that. I don't remember any cables coming from Honolulu or being sent from Oxford by Mr. Kentwell. The only cable I remember was when my sister died, the cable coming through announcing her death. My husband never mentioned any cables. The possibility of Eliza getting a divorce from Mr. Christian was mentioned in Honolulu but not in Oxford. I was quite surprised to see Mr. Withington when he came. I do remember having heard that somebody else was trying to get the property. Mr. Trent came a week later. In speaking to Mr. Withington about Eliza, I am certain I used the words "non compos mentis," and that he answered, "That is all right; we are taking the risk." Then my husband said, "Leave it to me; I am attending to this." I always use the word "non compos mentis," having used it with my sister-in-law in Honolulu, Mrs. Gus Holt.

At the Consulate my husband had the deed, looked over the paper and gave it to Mr. Holt to sign. He signed, then Mrs. Christian signed it, then myself and my husband last of all. Mr. Withington, I think, gave a check to my husband. I am not quite sure whether it was to my husband or to Mr. Holt. I don't think Mr. Withington read over the deed to us but if any deed was read Mr. Withington may

(Deposition of Mrs. Annie Holt Kentwell.)
have read it. It is my recollection, however, that it was not read. Mr. Westacott, the American Consul, did not do anything. I can't remember his taking our acknowledgments, but if it appears on the deed that he did, then it must be so. I can't remember whether there was more than one check.

My husband was four years at the Columbia Law School and got his L.L.B. degree there. After coming to England he studied law at Oxford, and in 1912 had his B.A. from Oxford in law; then he went to King's College at Cambridge University for two years. I don't think he practiced law at all during this time, just studying. I think he went to London and joined the Inner Temple. Then in 1916 he was called to the Bar. After that he lived in London. He went in Chambers as well. He came down to Oxford for the week-ends.

My husband generally used a typewriter in writing to others. I do not know whether he kept carbons of his letters. I think he destroyed all his letters before he went to China in 1917. He was, I think, careful in his business affairs and decidedly truthful. I had no correspondence with James L. Holt nor letters in my possession from him to Mr. Kentwell. I had one letter from James L. Holt relating to the Waialua deal but I turned it over to counsel. I think that letter was written during the time of this transaction about 1910. It was written to Mr. Kentwell. I turned over to counsel several letters, but I don't know how many of Mr. James

(Deposition of Mrs. Annie Holt Kentwell.)

L. Holt's letters. I have turned over to counsel letters dealing with the Waialua matter which were to James L. Holt and to John D. Holt.

(Counsel thereupon called witness' attention to a letter written by Lawrence Kentwell to James L. Holt, dated March 30, 1910, dealing with the Waialua matters, and asked that the same be marked for identification. This letter was later received in evidence as Petitioner's Exhibit D-8.)

WITNESS RESUMES: I have no recollection of this letter whatsoever and had never heard any discussion in my house about \$35,000, until the day we had lunch together.

• I never heard any discussion about the \$30,000 until it was discussed at table with Mr. Withington there. I have heard Mr. McCandless' name mentioned. This was when Mr. Trent came. Mr. Trent came, as far as I can remember, a week after Mr. Withington came.

After leaving the American Consulate when we met Mr. Withington, I can't remember just what we did, although we may have gone to the bank. It is so long ago I can't remember, really, these little incidents. I may have said that Mr. Withington, at the Consulate, asked Eliza to sign the deed as a favor to her cousin Jimmie as a witness to Uncle's signature—I don't remember. That was in 1910; remember this is 1928. That is very long ago, isn't it?

(Deposition of Mrs. Annie Holt Kentwell.)

(Counsel exhibited to witness a letter written by witness to Mr. Henry Smith under date of September 23, 1917, which stated in part, "Mr. Withington must have known at the time when he asked Eliza to sign it, saying that Cousin Jimmie had asked her to sign it as a favor, in order to please him, as a witness to Uncle's signature." Witness inspected the letter.)

WITNESS RESUMES: I did write this letter. If I wrote that about Mr. Withington, I must have written it when I felt very anxious about Mrs. Christian's affairs at the time. I don't quite remember whether Mr. Withington did say that. I am under oath now and I don't know what really happened at the time. What I wrote there I wrote when I was most anxious; but I cannot say anything now because I am under oath.

I do not remember writing to Judge W. J. Robinson in Honolulu, under date of June 10, 1910, asking that James L. Holt be put in as Trustee or administrator of the estate of R. W. Holt in place of John F. Colburn.

(Witness was thereupon shown a letter dated June 10, 1910, written to Honorable W. J. Robinson and signed jointly by John D. Holt, Eliza R. P. Christian, Annie H. Kentwell and Lawrence K. Kentwell. Said letter was offered for identification and later, during the trial, was received in evidence as Respondent's Exhibit 2-N.)

(Deposition of Mrs. Annie Holt Kentwell.)

WITNESS RESUMES: I have no recollection whatsoever of that letter.

I have a recollection of an agreement by which John D. Holt adopted my children. This agreement was discussed between Mr. Holt and Mr. Kentwell. I did exactly as my husband asked me to do. I think the agreement was executed in Oxford.

(Witness was thereupon shown a copy of the agreement of adoption, dated June 12, 1918, and asked if that refreshed her recollection on the subject.)

WITNESS RESUMES: I knew the children were adopted by Mr. Holt but I had no recollection where it took place. Looking at the document does not bring it back to my memory. I don't remember going to London and I don't remember Mr. Westacott. I know who he was, as I was before him in ✓ 1910, but have no recollection of seeing him again in connection with any document. When Mr. Holt died the document was presented in a court in Honolulu.

(Counsel thereupon offered for identification an adoption agreement dated June 12, 1918, between John D. Holt and Lawrence K. Kentwell and Annie H. Kentwell, in which John D. Holt purports to adopt the six Kentwell children, (then minors), which was signed by John D. Holt, Lawrence K. Kentwell and Annie H. Kentwell in the presence of R. Westacott and M. Mellon, and the acknowledgments to which were taken on June 12, 1918 by

(Deposition of Mrs. Annie Holt Kentwell.)

Richard Westacott, Vice Consul for the United States, at the United States Consulate General in London, England. This document was later received in evidence, without objection, as Respondent's Exhibit 15-C.)

WITNESS RESUMES: I don't remember signing said document, but if my name is there I must have signed.

I remember the execution of a power of attorney from Eliza Christian to Henry Smith. I think this was executed down town in Oxford in Mr. Rose's office. I think Eliza Christian and myself both signed. I do not remember any second power of attorney. I know nothing of Eliza executing a power of attorney at the Town Hall here in Oxford. Mr. Rose was Commissioner of Oaths and had an office at the Town Hall.

I remember also a document executed by Mrs. Christian before Mr. Linnell, a solicitor in Oxford. I appeared before Mr. Linnell with Eliza, and also Dr. Steadman, the latter being Mrs. Christian's medical attendant at the time. Dr. Steadman has not been our family physician at all, my family physician being Dr. Morton until 1918. I then had Dr. Freeborn, who was my doctor until Mr. Holt died. Then Dr. Steadman became family physician. Prior to 1922 Dr. Steadman was physician only for a time while Dr. Morton was away. I don't remember what the document was.

(Deposition of Mrs. Annie Holt Kentwell.)

Mrs. Christian was in the habit of taking summer holidays away from Oxford for every summer with someone from the family except when she was in a Home in London for a period of four years during the time that the child was born—1915 to 1919. She was not in Oxford during those years. I have no recollection of the name of the Home.

I saw Dr. Douglas about three or four weeks ago. I went to see him because I had forgotten what he said at the time he visited us in connection with the power of attorney. He did not tell me when I asked him. I don't remember suggesting to him that in view of Dr. Good's probable testimony it would not be advisable for him to testify.

Redirect Examination.

When I sold my interest in the Holt lands at Waialua to Mr. Galt, which transaction I remember, I turned the money from the sale over to my husband. I had given him complete control of all my property. Mr. John D. Holt's financial condition was bad when he died. I had had to give him money quite often. At the time of Mr. Withington's visit, John D. Holt had been drinking, but was not intoxicated.

I never had any conversation with my husband at all before Mr. Withington came about selling Eliza's interest for \$30,000 or for any sum. My husband certainly did not talk to Eliza about selling her property in Hawaii or concerning any details of the proposed sale of her properties. I have never heard,

(Deposition of Mrs. Annie Holt Kentwell.)

during all the time Eliza was with me, my husband talk to her about any matter of business.

In regard to the newspaper clippings in connection with Mrs. Jamieson's testimony which I heard, those papers were my papers and I know all about them. Eliza knew that I had these papers in Uncle's drawer. She was always taking things away from the house. I did not see her take them and do not know how she got them. I know they were taken away. The papers to which I refer are those marked "Exhibit 1, Testimony of Mrs. Frederica Jamieson."

(Referring to Dr. Douglas:) The Doctor has told awful lies; he has never had tea at my home; it is a downright lie; I have never asked him to tea.

(The following then transpired:)

"Mr. ULRICH: I want it to appear in the record that I have made every effort that I can within the power that is vested in this Commission to procure the records of Mr. L. K. Kentwell in the month of May and following in 1910 and that inasmuch as he has taken the position that it will not appear without a Court order and I cannot procure a Court order that evidence is not available. If you doubt that is the fact we will have Mr. Lungley interview him and endeavor to procure the order.

Mr. CASTLE: You have made the statement.

Mr. ULRICH: It is Mr. Bennett, Manager of Lloyd's Bank."

(On the original deposition and following the above appears in typing:)

(Deposition of Mrs. Annie Holt Kentwell.)

"I hereby certify that on this twenty-third day of November 1928 I interviewed Mr. Herbert John Bennett M. C. the Manager of Lloyds Bank Limited in the City of Oxford and he affirmed his statement that no information with reference to the account of Lawrence K. Kentwell can be given by the Bank to any person whatsoever without an authority in writing from the said Lawrence K. Kentwell, Commissioner."

(After the hearings in Oxford, England, the deposition of ANNIE KENTWELL was reopened for the purpose of examination on certain letters recently found. This was done on written cross- and re-direct interrogatories forwarded from Honolulu. Such cross- and re-direct interrogatories are herewith condensed as follows:)

WITNESS (Annie Kentwell) RESUMES: I identify my signature to a letter written to "Henry Smith," dated September 23, 1927, and signed "Annie H. Kentwell." This letter was written to Mr. Henry Smith, Clerk of Court in Honolulu, who is a lawyer, and my letters to him were written to him as my attorney and as dealing for Mrs. Christian. (The letter referred to states in part that Mrs. Kentwell had been told by her lawyer that one Judge Stanley, of Honolulu, knew that Mrs. Christian was non compos mentis and, further referring to the execution of the deed of May 2, 1910, at the American Consulate, states: "Mr. Withington must have known it at the time when he asked

(Deposition of Mrs. Annie Holt Kentwell.)

Eliza to sign it, saying that Cousin Jimmie had asked her to sign it, as a favor in order to please him as a witness to Uncle's signature.")

WITNESS RESUMES: I wrote such letter, and this letter, together with following letters, are private, privileged letters written to Mr. Henry Smith on a matter which has no connection with the present claim. I have already testified that I did not hear Mr. Withington make any such statement.

(Witness was thereupon shown a letter dated November 5, 1922, signed "Annie H. Kentwell" and directed to "Henry Smith." The letter states in part: "Eliza is giving you a power of attorney to act for her.")

WITNESS RESUMES: I identify my signature, and did write and send to Henry Smith the letter referred to. The statement that Mrs. Eliza Christian is giving Mr. Henry Smith a power of attorney is not what the language suggests. ~~What I meant to say was that the power of attorney was being signed by Mrs. Christian on my advice.~~

(Witness was thereupon shown a letter dated January 22, 1923, signed "Annie Kentwell" and directed to "Henry Smith." The letter reads in part: "Eliza tells me that she sent you a wire last Thursday, the 18th inst., informing you that she had given you her power of attorney and had also wired you for some money.")

WITNESS RESUMES: I identify my signature, and did write and send the letter referred to. The reason I wrote this letter is that I was desperately

(Deposition of Mrs. Annie Holt Kentwell.)

endeavoring to obtain money for Mrs. Christian. I tried my best to make it appear that she was competent, although I knew that this was not the fact, because I believed that no relief could be had otherwise. Wherever the letters now being shown me are directed to "Henry Smith," "Mr. Smith," "Henry," or "Friend," I mean Mr. Henry Smith, Clerk of the Circuit Court of Honolulu.

(Witness was thereupon shown a letter dated March 13, 1923, signed "Annie H. Kentwell" and directed to "Mr. Smith." The letter refers to the visit of Dr. Douglas and the fact that Mrs. Christian had given Dr. Douglas entire satisfaction, adding, "Dr. Douglas was surprised at her wonderful memory, for she remembers every date more so than I do." The letter further stated: "By the way, have you thought over the fact that Uncle adopted the children before he made his will & before the new Law in Honolulu over adoption came into use, so a solicitor told me he couldn't see how Judge Bankes could decide in that way & that I should write to my husband about it, - I am only sorry I was not there to see it for I am sure there is a loophole somewhere. Both the Waianae people & Waialua people were anxious to have it settled this way because they had bought Eliza's interest on speculation & if they had decided that uncle's adoption of the children were legal, then it meant they had a share to the estate & Eliza's interest had diminished. Besides the children were adopted before the American Consul & Uncle was an American citizen, still we'll see what Lawrence says.")

(Deposition of Mrs. Annie Holt Kentwell.)

WITNESS RESUMES: I identify my signature, and did write and send the letter referred to. I was desperately endeavoring to create the impression that Mrs. Christian was competent, believing that unless I did so the moneys which we so much needed would be indefinitely withheld. I should not have said that Mrs. Christian had a wonderful memory for she had no memory at all. I was trying to get Dr. Douglas to make a report to the effect that Mrs. Christian was all right so that the power of attorney would hold.

(Witness was thereupon shown a letter dated April 12, 1923, signed "Annie H. Kentwell" and directed to "Henry Smith." This letter again refers to the visit of Dr. Douglas and to Mrs. Christian's memory, and further states: "Eliza suggested to send a wire to Judge Banks asking him to authorize H. T. to pay the money over to you but I have asked her to wait until I hear further from you." (H. T. refers to the Hawaiian Trust Company, Trustee of the R. W. Holt Estate.))

WITNESS RESUMES: I identify my signature and did write and send the letter referred to. Mrs. Christian did not suggest that a wire should be sent to Judge Banks. Now that I am obliged to give my statements under oath I must say what is correct and true. The reason why I wrote these letters, containing these statements that they did contain, knowing these statements not to be true, was because I was hoping that Mr. Smith would use the letters to show to the Hawaiian Trust Company so that they

(Deposition of Mrs. Annie Holt Kentwell.)

would honor the power of attorney and forward the money which was so much needed.

(Witness was thereupon shown a letter dated May 23, 1923, directed to "Henry" and signed "Annie Kentwell," with an addition or supplement to the letter being signed "Annie." The letter refers to witness's discussion with Mrs. Christian about securities, and further refers to the fact that witness's husband sends her £150 a month through the London branch of the Guaranty Trust Company of New York.)

WITNESS RESUMES: I identify my signature, and did write and send the letter referred to. I never talked such matter of business over with Mrs. Christian. My testimony already given on oath truthfully proves that any such statement would be absurd.

(Witness was thereupon shown a letter dated August 22, 1923, signed "Annie H. Kentwell" and directed to "Friend." The letter states in part: "I have just come across a Will which was drawn up by Frank Andrade for Eliza when she came away with us and signed in Andrade's presence and Armitage's.")

WITNESS RESUMES: It is improbable that I should have written to Mr. Henry Smith about the will unless I had seen something, either a draft or a will which was drawn up by Mr. Andrade and later mislaid. I can honestly say I have never seen Mrs. Christian make a will and I have no knowledge of any attempts of having a will signed by her. I have

(Deposition of Mrs. Annie Holt Kentwell.)

no will in my possession and am not capable of having it brought into my possession.

(All of the foregoing letters addressed to "Henry Smith," "Mr. Smith," "Henry," or "Friend," were letters written by the witness, Annie Kentwell, to Henry Smith in Honolulu, and all of said letters were received in evidence as exhibits attached to the deposition of Annie Kentwell herewith written into the record.)

MR. RUDOLPH BUKELEY

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have been for eight years last past a local agent in Hawaii for the New York Life Insurance Company, during which time I have written insurance on a great many persons here, and have written over one million dollars in a year. Before engaging in the life insurance business I was in the banking business, was vice-president of the First National Bank for about a year and a half and prior to that had been cashier of the institution since about 1915. Before that time in 1896 I was in the Bank of British North America for seven or eight years.

There have been compiled in the insurance business for use therein tables and statistics showing the life expectancies of persons at various ages. For the United States the recognized table is "The American Table of Mortality." The life expectancy

(Testimony of Mr. Rudolph Bukeley.)

of a woman twenty-four years old by this table is $39\frac{1}{2}$ to 40 years, while the life expectancy of a man seventy-one years of age is eight years.

The New York Life Insurance Company was operating in England in 1910. Life insurance companies will write any form of insurance in which the insured has an insurable interest.

“Q. Assuming the purchase by someone of a contingent interest in the remainder, that is, of an interest which depends upon the seller surviving a certain life tenant, it is a well-recognized form of insurance for protecting a purchaser against the death of the seller pending the vesting of that contingency?

A. It is often done.”

The rate of insurance, the premium, on the life of a woman twenty-four years old in 1910, on the ordinary life policy, would be \$20.99 per thousand. The annual average cost of such insurance for a period of eight years on the life of a woman twenty-four years old in 1910, if the policy were surrendered at the end of eight years, would be \$8.94 per thousand per annum. This would be the annual average cost of carrying that insurance for the period named. I have computed the annual average cost of such insurance on the life of a woman twenty-four years of age taken out in 1910 and carried for a period of ten years and then surrendered. This annual cost would be \$7.07 per thousand. I have also computed the annual average cost to carry insurance on a policy taken out in May, 1910

(Testimony of Mr. Rudolph Bukeley.)

and surrendered, assuming the death of the life tenant in April or May, 1922, a period of twelve years, and this annual average cost is \$6.88. These figures are based on the amount you have paid out in premiums, less the amount returned in annual dividends, less the cash value upon surrender of the policy. It does not include interest on the money you have paid. I have also carried out my computation for a period of fifteen years, which is \$4.63 per thousand per annum. Assuming that a purchaser plans the purchase of a contingent interest dependent upon the life of a person whose expectancy is eight years, or of a man seventy-one years of age, and that it is desired to make a reasonable correction against the purchase price or unreasonable deduction therefrom, to enable that purchaser to have complete protection in the matter of his investment pending the vesting of his remainder, I think a reasonable or conservative correction would be to take the man's expectancy of life and insure the seller,—If the person only had a life interest in the period equalling the expectancy of the land he held title in, as in this case, eight years. For this eight-year period, on the problem presented me, deducting dividends, which of course would be problematical, but you could figure on between twenty and thirty per cent of the premium, less the cash value which would be established, for a period of eight years the cost per thousand would be eight times \$8.94.

(Testimony of Mr. Rudolph Bukeley.)

High class life insurance companies then, as now, would not insure the life of a person definitely feeble-minded. No distinction is made in the insurance business between writing insurance on the life of a woman and that of a man.

Cross Examination.

I am testifying purely from an insurance point of view, and I was asked to have certain statistics based on life insurance tables. Real estate has nothing to do with the transaction. If the purchase involved a certain sum of money the limit of the insurance allowed would be that purchase price. The question of business risk is not involved. If a life insurance company hears rumors that a person is supposed to be feeble-minded, an investigation is made as to the truth of such rumors before any policy is issued. The one to be insured would have to get by a physical examination before insurance would be written. There are no special mental tests that are ordinarily applied.

(Counsel for Petitioner then called the attention of the Court to a letter written by Mr. Withington to his firm in Honolulu, dated May 19, 1910 (Exhibit D-35), with particular reference to the statement therein contained, that Castle & Withington had already been written to by Mr. Withington relative to trouble over the insurance, and demanded of counsel for Respondent Waiialua that said letter be produced. In response thereto, counsel for Respondent stated that he had made a special look

(Testimony of Mr. L. L. McCandless.)
through the files and found no such letter. That he would look again but it did not appear on the examination already made.)

MR. L. L. McCANDLESS

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have been interested in the purchase of lands in Hawaii for many years. In 1910 I had some negotiations relative to the purchase of the interests of Miss Eliza Holt or Mrs. Christian through Mr. Trent. The land was offered through Mr. Trent for me. There came an offer to me, as I recollect it, but my mind is vague—it is a long while ago—but it was an offer that had come by cable from Mr. Kentwell in England that Mrs. Christian would sell for \$30,000 and I sent Mr. Trent to England to close the deal. I have been acquainted with the Holt lands since prior to 1910. I knew there was some land in cane on the Holt lands but nothing about the amount of pineapples. I have bought a good deal of land in this Territory and sold very little, extending over a period of a great number of years. I have had occasions to deal in lands and to know the value of lands used for pineapple purposes. I have leased some of my own lands for pineapples, and I know something about the business of pineapples. As to the character of the

(Testimony of Mr. L. L. McCandless.)

upper lands of Heleman, a portion of that is very fine land for pineapple purposes. I knew the character of that country, as I had been all through that land along about 1886, driving cattle. I tried in 1905, or perhaps 1903, to get the railroads to run their line up through that country. In my opinion those lands could have been bought on the market at that time from \$150 to \$200 per acre, and that would not have been too much for all the good lands of Heleman. I am talking about the flat plateau land, for there is a lot of land up there which is gulch land. I am only speaking of the lands actually leased for pineapple purposes, or an average, say, of \$175 per acre. This is for an unencumbered fee simple title, with no law suits involved, and not for an undivided interest.

Cross Examination.

Leases on the land would have some effect on market value. You can fix the market value to some extent by what you can get out of the rentals. I leased some pineapple land on the other side of the island in 1911 at \$7.50 per acre. My land is not a comparison to the Heleman lands so far as quality goes, and I think the quality of Heleman would be far ahead of anything we have had at my lands. In leasing the land I used the method of leasing it for what you can get. As for the Holt lands, it would not have been unfair to demand \$15 an acre. I don't know anything about what they were actually

(Testimony of Mr. L. L. McCandless.)

getting for their leases, but my price of \$175 per acre is based on the fact that they should get around \$15 an acre. In 1910 we had had little ups and downs in the pineapple business. We have had little ups and downs, but I know the character of what the country up there is. That is a very fine country, all beautiful agricultural country. I would class the Ii Estate lands as the same general character as the Holt lands and I understood the Ii Estate were getting \$10 to \$12 an acre. I think the Ii Estate lands would be worth as much as \$175 an acre, \$150 to \$200 an acre.

I don't know exactly the state of the pineapple market in 1910. Even if I did not know the state of the pineapple market at that time I would still not change my testimony as to the value, because I think those lands are worth it. The pineapple canneries may not pay as much for pineapples one year as they would another, but still the general average of it would make very little difference in the value of the property. We have ups and downs in the pineapple industry just like the ups and downs we have had with sugar,—good seasons and then again poor ones. I consider that in 1910 the pineapple industry was a successful industry, though in its experimental state. At the present time pineapple lands are running along at a rental of about \$10 an acre, although some small pieces may have been leased of late as high as \$15 per acre. Those, however, are the exceptions. I had one piece of land in 1918, at Waikane, a small piece,

2 (Testimony of Mr. L. L. McCandless.)

that I got \$20 an acre for; in 1910 \$10 an acre would be a fair rental. I don't know the average rentals of the Holt lands in 1910. There was a depression in the pineapple business, not prior to 1910, as I recall, but since that time. I believe the pineapple industry from the beginning of it was a success. The depression referred to was about 1912 or 1914. My idea of that depression being that some of the canneries wanted to get rid of some of the little planters. I don't think there was any real cause for it, because it did destroy the little planters and did not destroy the big men in the pineapple industry. It destroyed the little planters. That was told to me by the big Hawaiian pineapple people and is only a conjecture on my part. I do not know the facts. I don't think there has been any time but that we always got rid of our pineapples. I don't know what year the iron sulphate spray came in. It was said that it did help the pineapples. I am not positive about that; don't know anything about it. It came in after 1910 and was generally used. I don't know when the Caterpillar tractor came into general use in the pineapple industry—probably some before 1910 and some afterwards. The paper mulch came into effect only within the last few years; some claim it has made a tremendous change in the industry and some not. The Hawaiian Pineapple Company, Libby, McNeill & Libby, and the California Fruit Packers use paper mulch. The outlay for paper mulch would not be justified on the small pieces.

(Testimony of Mr. L. L. McCandless.)

I offered \$30,000 in 1910 for the Eliza Christian interest in the Holt lands and took the matter up with Mr. Trent as representing me. The character of the land as I knew it leads me to know that the Holt lands up in that section were very valuable lands for pineapple purposes. This I knew in 1910. The general character of that land would make all of that upper land available for pineapple purposes. Prior to 1910 I was in the pineapple business at Pearl City, with the Woodlawn Fruit Company, having the majority of the stock. At that time we irrigated pineapples. We sold the fresh fruit to the mainland in boxes. I sold my stock to the Honolulu Plantation who later abandoned the business, threw the pineapples away, and the farmers gathered the roots and planted them in Wahiawa. This was in 1900. Therefore it was I who probably started the Wahiawa pineapples.

On my lands on the other side of the island, which I leased for pineapple purposes, they are still growing pineapples to a very small extent. They are now mostly pasturing cattle and horses on the lands, and the lands are lying fallow. Most all of that country over there has been abandoned for pineapples. In 1910 I do not think it was determined at how high an elevation pineapples could grow. I think they were really experimenting in 1910. I think they have found out a good deal since. In the last few years they found out lands that were not considered available for pineapple lands which turned out to be very good pineapple lands.

(Testimony of Mr. L. L. McCandless.)

Lands ought to be worth more now than they were in 1910. If you are only getting \$1.00 an acre up there, you would take into consideration that rental value of course, but my opinion of Helemano lands is that it is one of the best pieces of pineapple land in this country. If you based values on a certain number of times the annual rental, you might say ten times the rental, or maybe less, in 1910, I don't know what basis was being used by the Government for tax purposes in 1910. As to the pasture lands, which are not classed as pineapple lands, I believe that a rental of 20¢ per acre per year would be fair for pastoral purposes. I testified to that effect in a case between the Waialua Agricultural Company and the Oahu Railroad, but the decision was 10¢ an acre per annum.

Redirect Examination.

Referring to map, Exhibit C, in 1910, on the lands used for pasture, I would not put a value higher than \$2.00 or \$3.00 an acre, or possibly \$4.00. \$5.00 an acre is exceptional for pastoral lands.

Recross Examination.

Referring to the map, Exhibit C, 50%, 60% or 70% of the land on the north side of the Helemano Gulch is broken up, and that gulch land, with the rolling land too steep for pineapples, would be good for pastoral purposes. The land on the south side of Helemano Gulch is better. I think that \$2.00 an acre in 1910 would be a fair value for the pastoral lands.

ARTHUR E. RESTARICK,

called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am Clerk of the Circuit Court of the First Judicial Circuit, Territory of Hawaii. Through me there was introduced in evidence the record "In the Matter of the Guardianship of Eliza Holt, a Minor," from which it appeared that upon the resignation of J. S. Walker as guardian, Annie Holt was appointed guardian of Eliza Holt under date of August 3, 1900. The records of the guardianship matter are missing from the files, having been taken by one Judge Gear to San Francisco and never returned. The guardianship of Eliza Holt as a minor was instituted in 1893.

MRS. BERNICE IRWIN

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I visited with Mrs. Cushingham at Makaha and remained there throughout an entire summer, during which time I saw Eliza around her father's home most of the time. Eliza at this time was five or six years old. From my observation of the child I would describe her as being simple-minded, or, to use the Hawaiian expression, "lolo"; she did not go around much with the other children; she was just simple and feeble-minded. When one would say

(Testimony of Mrs. Bernice Irwin.)

"Hello, Eliza," to her, she would look up with a sort of vacant stare and say nothing. I never heard the child talk sensibly or rationally with anyone, although I had no difficulty in talking with other children of a similar age.

(Through Mr. Kenneth B. Barnes, Secretary of the Hawaiian Pineapple Company, Limited, and over the objection of the Respondent, Petitioner introduced in evidence a map dated November 1, 1922, of the property leased by the said Pineapple Company from Waialua, the map being marked Petitioner's Exhibit H, and showing the lands in cultivation for pineapples as of said date of November 1, 1922. The map has no reference whatsoever as to what lands were actually in process of cultivation in the Holt area at Waialua in 1910.)

MANUEL OLSON

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am forty-nine years of age, was a friend of Albert Christian's, and knew Albert Christian and Eliza during the time that they lived together as husband and wife. I saw her at the Christian home three or four times within a couple of months. I did not know her before her marriage, nor did I know her after she separated from Christian. From my observation of her, I would call her "lolo"; she

(Testimony of Manuel Olson.)

was very simple and could not make heads or tails out of anything. I tried twice to speak to her in English but could get no answer from her; I then tried Hawaiian, and also got no answer. When I went to the house with Christian I thought it funny that she did not greet me or say anything; she stood on the veranda as I came up the steps, and said absolutely nothing. I was surprised when I learned that this was Christian's wife, and said: "That's funny; she is a little top-sided." I noticed the way she was dressed and her actions. I saw a little baby on the veranda and noticed that she did not take care of it, nor seem to care. While we were playing cards she kept away all the time as if she didn't care. During the times I went there I never heard her carry on a sensible or rational conversation with anyone.

Cross-Examination.

I only saw Mrs. Christian three or four times. I think this was about a year before I was married in 1904. This was when we were playing cards and drinking. I did not know whose baby it was, the sex, or anything about it, but merely noticed the child clad in its dress lying on the floor, and thought Mrs. Christian would care for it even if she were not the mother. I thought that was peculiar, because one observes how children are treated whenever one visits a home. The child looked unclean and uncouth. Eliza could not answer an intelligent question, and I got the impression she was "feeble-minded" because of her looks and actions; she acted silly

(Testimony of Manuel Olson.)

and feeble-minded, but I could not describe her actions. She did not answer me when I passed the time of day with her, and looked feeble-minded to me.

MRS. DAISY SANDERS

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I knew Eliza Holt at St. Andrew's Priory when she was about fourteen or fifteen years old. We were there perhaps two or three months. I think that Eliza was in the baby class. I remember Eliza's condition as, well, most people would—the new name for it now is “feeble-minded,” but we used to call her feeble and stupid, the girls in school used to. She didn't want to mingle with the girls, and if you asked her anything she didn't know what to answer you, whether to say “yes” or “no”; kind of timid. Sometimes she would answer and sometimes she wouldn't as if she didn't know.

MR. JAMES GIBB

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have been engaged in the sugar business in the Hawaiian Islands since 1888, including the management of two plantations, one being the Honolulu

(Testimony of Mr. James Gibb.)

Plantation, on this island, for sixteen years up to December, 1925. I have testified on sugar values once or twice, the last being for the Internal Revenue Department in Washington a year or so ago.

I have examined the Holt lands, both below and above the Wahiawa Extension Ditch. I have visited and examined them with a view to placing a value on the cane lands there. A fair market value for the Holt cane lands, as of May 1910, was \$200 an acre. There is a difference in value between the lower and upper sugar cane lands and I have placed an average of \$200 an acre for the cane lands. This value is without water inherent in the lands themselves but on the basis that there was water flowing and available for these lands. I consider \$200 per acre a fair price for the land, with the contemplation that water would have to be paid for in addition to that amount.

(The witness was then questioned as to the value, in his opinion, of an annual flow of water for irrigation purposes assuming the development of the flow of approximately three billion gallons annually by a series of ditches, the intakes of which are entirely on the Holt lands, one being at the place marked "F" and the other at a place marked "G", on the map, Exhibit C. Respondent objected to the question on the ground there was no foundation laid for the witness to testify as to the value of water and in the second place that the evidence showed that the waters in question did not arise upon the Holt lands but came from the lands above, the Re-

(Testimony of Mr. James Gibb.)

spondent having a lease on such waters. The Court ruled as follows:

"The COURT: The Court will not permit you to base a hypothetical question to this witness which involves this witness using the personal assets of the Waialua Agricultural Company developed by itself on other lands, brought on to these lands, but, in that connection, if this witness knows, or if you have anything in the record or want to put it in the record as to what the water was the Holt land had, or what any expert could see was available, if that could detract or add to the value of these lands, that might be relevant, but the question you propound to this witness includes in every item facts that are beyond the scope of the Holt origination or creation."

Petitioner made an offer to prove that a flow of three billion gallons of water produced through a set of ditches on the Holt lands, with correction for the extent to which that flow is represented by payment for waters conveyed to the system on upper lands, to the extent of a rental of \$4,000 annually, would represent an asset to the Holt lands, in the opinion of the witness, of approximately \$140,000. Objection being likewise interposed to this offer by Respondent, the Court denied the offer.)

WITNESS RESUMES: Referring to Exhibit F-7, wherein is enumerated certain improvements such as reservoirs, ditches and the like on the Holt lands and representing improvements on the

(Testimony of Mr. James Gibb.)

land in 1910, such improvements represent an asset which has not been considered by me in the value of \$200 an acre which I have given to the cane lands, and I would say that those improvements would be an additional value, less depreciation up to 1910. To take these improvements as a whole and determine depreciation is somewhat difficult. There are several different improvements here, several of which ought to have different rates of depreciation. I haven't figured it out. I guess I can do that roughly. Taking the improvements as a whole I would consider that 5% per annum would be a fair average rate of depreciation. It would be fair, in addition to the value which I have given for the sugar lands in 1910, to therefore include the additional element of value in the land of one hundred thirty-four odd thousand dollars depreciated over the period of time from 1905 to 1910. This would represent an additional value to the land.

I have gone on the lands and inspected them above the Helemano extension ditch at an elevation of approximately seven hundred feet up to an approximate elevation of a thousand feet. In my opinion in 1910 the lands above the Helemano extension ditch and below the thousand-foot level, assuming them then to be in an unimproved condition, had a value of \$25 for dry land cane, and very cheap at that.

From my experience in the sugar industry it was on a firm and established basis in 1910. In fact, it was firmly established before that. I have gone into the growth of the sugar industry in Hawaii from

(Testimony of Mr. James Gibb.)

1837 to 1919 and am of the opinion that the growth commenced when we got the Reciprocity Treaty and from then on it climbed right up. The industry had in my opinion in 1910 got long past the experimental stage, and I know of my own knowledge that back in 1898 when the Waialua plantation started that there were millions of dollars put in the industry just as soon as we got annexation,—another proof that the sugar industry was on a good firm basis. Sugar was grown on Waialua fifty years before 1910 and off and on since that time.

Cross-Examination.

In arriving at my value of \$200 per acre, I considered the fertility of the soil, location, prospects of future profits, and the profits that had been made generally by Waialua on its sugar cane. I also considered it as an investment to an outsider, knowing its location, dove-tailed between other cane lands. I did not take into consideration other leases but I took into consideration the value to Waialua, namely, that a portion of its lands are to be held in fee.

The Holt lands are next to the Bishop Estate lands and the rental on the Bishop Estate land, on the percentage basis, figures out about \$7.75 per acre per annum rent. I consider the sugar industry here is fairly hazardous, in spite of the fact that it had been going along profitably in the Hawaiian Islands long before 1910. Testifying in Washington for the Government, I stated that the sugar business has always been considered a very risky business and

(Testimony of Mr. James Gibb.)

there have always been hazards. The productivity of any sugar land depends on a great many elements, such as management, price of sugar, labor situation, possible shortage of labor, fertilization, and other elements. It would likewise depend upon how the particular plantation treated those lands and the water supply in connection with the land. When, therefore, I am speaking of conditions, I mean the conditions applied to these Holt lands by the Waialua Plantation.

In figuring on net profits, I figured the net profit per-ton all over Waialua Plantation. In considering net profit I did not consider interest on the investment. The question of management is important and certainly determines whether the plantation is profitable or not. Our plantations also face the tariff question, and I testified in Washington that, with free sugar, 75% to 80% of our plantations would go out of business. I, however, think that we could perhaps do better than that. I was painting a somewhat black picture in Washington, but now my picture is a little rosy.

The sugar cane varieties undergo a considerable change. Up to 1910 the Lahaina variety was intensively grown, and gradually the types have been changing. Waialua had perhaps more different varieties than any other plantation on this island. H-109 has become the dominant cane at Waialua. That did not exist except in a very few patches in 1910.

My value of cane lands below the Wahiawa Extension Ditch of \$200 per acre is without water, but

(Testimony of Mr. James Gibb.)

with the knowledge there was water that could be run on to it from Wahiawa dam or other high lands. I figured the lower half of the cane lands, shown in yellow, worth \$250, and the upper \$150. My idea in figuring it out that way was it is more expensive to put water on to the higher lands, and usually you get a little less returns. My value of \$200 per acre is its value to Waialua. As of May 2, 1910, any of the lands down to approximately 500 feet elevation would have been good for pineapples.

My testimony on values is based on a fee simple unencumbered interest. I am not taking into consideration any lease on such interest, or whether there are undivided interests in the land.

Referring to Exhibit F-7, the improvements therein set forth are improvements which would be valuable particularly to Waialua, assuming it to be considered simply as a sugar proposition. To the average owner of the land the improvements would not be of much value except for sugar cane purposes. I simply roughly estimated depreciation on these improvements. I was not taking the terms of the lease on this land into consideration.

Redirect Examination.

If I had no record at all of Waialua earnings, and basing my opinion particularly upon the other means used for placing the value on that land, I would still reach my figure of \$200 an acre. From my experience with other lands on other plantations, I would consider that land was worth \$200 an acre to raise sugar cane on even though I didn't know

(Testimony of Mr. James Gibb.)

what the profits from the land were. I checked my opinion of value heretofore given by reference to Waialua's earnings and recapitalization and was quite satisfied from looking over those earnings that the value I had placed on the lands from looking at it, judging it from other lands, only confirm my views that I was right in estimating that value. I preferred to take a less and more conservative value than the figure \$300 an acre which I arrived at by reference to Waialau's earnings and recapitalization. My valuation of \$200 an acre was placed on these lands as sugar lands with available water, although it did not include additional cost of bringing water on to the lands, which I would anticipate paying in addition to the \$200. I placed the much lower valuation of \$25 on the upper side of the ditch because of its potential value as dry cane land. The element of water had no particular place in the difference in value between such land and the land in cane. In my estimate of the value of the cane lands I assume irrigation water will be available and on the 25-dollar land I assume it will not be available. The value of \$200 an acre which I have given is a value it would have in the hands of an independent purchaser or in the hands of anyone dealing with the land at that time for the purpose of either selling it for sugar production or leasing it for that purpose, or otherwise handling it in the production of sugar under conditions existing there.

MR. H. C. TENNENT

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am a certified public accountant and a member of the firm of Tennent & Wright. The present worth of a thousand dollars on May 2, 1910, due to be received in eight years from that date, figured at a rate of discount at 6%, is \$627.41. Six per cent is the figure I have used in similar cases. Six per cent is the usual rate on Territorial bonds, and in my opinion is the figure which should be used in a problem such as here presented. In other words, if you compound \$627.41 it will amount to a thousand dollars at the end of eight years. If the figure of \$627.41 is corrected to allow for cost of insurance to protect against the contingency of the death during the eight-year period of a woman twenty-four years old, the net figure would be 552.14 per thousand. The figures given by me are figures based on Mr. Bukeley's testimony.

(Petitioner's Exhibit K was received in evidence as illustrating witness' testimony, without objection, and reads as follows:)

(Testimony of H. C. Tennent.)

DATA SUPPLIED AND CALCULATION BASED THEREON SHOW-
ING COST OF INSURANCE PER \$1000 FOR 8 YEARS.

	Premium payable	Dividend deduc- tible from premium	Net payments	Value as of 2nd May, 1910 at 6% per annum
Beginning of 1st Year	20.99		20.99	20.99
" " 2nd "	20.99		20.99	20.80
" " 3rd "	20.99	3.45	17.54	15.61
" " 4th "	20.99	3.56	17.43	14.64
" " 5th "	20.99	3.68	17.31	13.70
" " 6th "	20.99	5.82	15.17	11.33
" " 7th "	20.99	3.84	17.15	12.09
" " 8th "	20.99	3.95	17.04	11.33
Total net payments	167.92	24.30	143.62	120.49
Less:				
Returnable at end of the 8th year: dividend		4.07		
Cash surrender value		68.00	72.07	45.22
			71.55	75.27

MRS. HELEN R. ROSA

was called as a witness for Petitioner, was sworn,
and testified as follows:

Direct Examination.

I have lived in Hawaii all my life and knew
Eliza Holt when the latter was a neighbor of mine
on Fort Street in Honolulu. Eliza was then a
young girl in her teens, and I used to see her quite

(Testimony of Mrs. Helen R. Rosa.)

often because we were all friendly, visiting taking place between our respective families. I knew her prior to the time that Eliza went to live with Mrs. Kentwell at Waikiki, something longer than three or four years. From my recollection of Eliza and my observation of her, I would say that Eliza was an imbecile. This was because of the way Eliza acted and the fact that Eliza could not carry on any kind of conversation. When I tried to talk to her, the chief response was a grin. I had no occasion to see whether Eliza could read or write, but merely knew her in the conversational line. During the time that I knew her, the condition referred to was always the same. I never heard Eliza carry on a sensible conversation with anyone.

Cross Examination.

Of course I was an older girl than Eliza when I saw her playing with the children; in fact, I am seven years older than Eliza. I saw her at my home once in a while, not oftener than once a week. I base my impression that Eliza was an imbecile on the way Eliza talked and laughed. At this particular time we all described her as an imbecile. I do not remember whether one would get that impression the first time one saw her. I do not remember her distinctly over this period of years. I have heard Eliza's mentality discussed since she left Hawaii.

MARY HESTER LEMON

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am Registrar of the Bureau of Vital Statistics. My sister married Annie Kentwell's brother. I knew Eliza from a child, and particularly when she lived with the Kentwells at Waikiki. I knew Eliza when the latter was in her teens and before she had a child, as well as afterwards. We and the Kentwells were neighbors and used to exchange family visits. From my observation of Eliza I would say that she was a simpleton. She was always looked on by us as a lolo, though I had little to do with her because I was an older girl at the time. I couldn't say whether I had ever heard her carry on a sensible, rational conversation because I saw her as an older person would. My impression was merely a general impression.

Cross Examination.

She was more or less simple in certain things and quite bright in others. It depended on what was asked her. She struck you immediately as a peculiarly looking child, a child not bright. She looked like an imbecile to me.

(Counsel for Petitioner here called the Court's attention to the offer of the guardianship proceedings of John D. Holt and James R. Holt, Probate 3097. After argument of counsel the Court sustained

(Testimony of Mary Hester Lemon.)

the objection of counsel for Waialua to its introduction as evidence.

Counsel for Petitioner then offered to prove that Robert William Holt, grandfather of Eliza and father of John D. Holt, had been similarly adjudicated a spendthrift in the year 1862 after the birth of John D. Holt. The Court sustained the objection of counsel for Waialua to its introduction.)

The

DEPOSITION OF DR. EDWIN MORTON,

taken November 3, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I am a Master of Arts of Christ Church, Oxford, and Doctor of Medicine and Master of Surgery of the University of Edinburgh. I took a special course with reference to mental conditions at the Morning Side Asylum in Edinburgh. I have repeatedly acted as locum tenens at the Warenford Mental Hospital in Oxford. I was medical superintendent at a special school for mentally deficient children at Wolverhampton. For ten or twelve years last past I have been a member of the Statutory Committee for the City of Oxford for the treatment of mental deficient, and am Chairman of the Voluntary Association for Mental Welfare. I have

(Deposition of Dr. Edwin Morton.)

known Mrs. Eliza Holt Christian since 1909 and have treated the various members of the Kentwell home, including Eliza, professionally from time to time. I have had occasion to observe the mental condition of Eliza Holt Christian in a general way. From my observation of her and from such facts as have come to my attention in treating her professionally her mental condition would be obviously one of feeble intellect and I should put her about the level of a child of about five or six. I saw her recently at the Kentwell home, and her mental condition was substantially the same as it had been when I first knew her.

Cross Examination.

I first began to attend the Kentwell family, including Mrs. Eliza Holt Christian, about 1909. I think I saw Mrs. Christian professionally twice; once for quite a physical condition. Her father was alive at that time. He was quite a delightful old gentleman. One always looked upon Mrs. Christian as rather of feeble mind. I knew that she had some native blood and that would make her different from the ordinary person one would come in contact with. So far as I had the opportunity of observing, her conversation was normal. She used to go out and act really as sort of nursemaid for the children, and of course one looked upon her as the same level. I don't remember carrying on any conversation with her. I should hardly say she seemed quite

(Deposition of Dr. Edwin Morton.)

normal. She would not appear like a normal English girl at that stage. To be perfectly candid I don't think one paid much attention to it. It was obvious that she was not up to the standard of the ordinary English girl. That would be placing native blood rather high to put her to that standard.

"Q. Then I just ask you with that sort of feeble-mindedness there is a tendency, is there not, as years go on a person gets older, there is a tendency for that condition to be aggravated more; emphasized, shall I say?

A. Well, I suppose at the same rate that a normal person, they are not so active at fifty or sixty as we are at thirty and forty, and I suppose she would go in the same sort of ratio, but nothing more than that, nothing more definite."

The

DEPOSITION OF
MISS MARY MATHEWS,

taken November 3, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I am a domestic. I knew Mrs. Kentwell and Eliza Holt Christian first about eight years ago when I worked in the Kentwell home for three summer holidays. Eliza Christian brought to our house

(Deposition of Miss Mary Mathews.)

newspaper cuttings, pictures, comics, an old money box, a comb and a packet of hair pins. She gave me the comb and hair pins, and the other things to mother for the children. During my time in the Kentwell home I never saw her reading. She came once to the house with two shillings eight pence. She was excited about it but did not say what she was going to do with the money. I have never known her to have a rational conversation with anybody.

(Counsel for Petitioner then called upon counsel for Respondent Waialua to admit that no moneys or consideration of any kind was paid to Eliza Christian, or to anyone acting on her behalf, as a consideration for the assent by her to the lease of March 17, 1905 (Ex. A-8), and also to admit that no rental for the lease had been paid to her, to which counsel for Respondent replied by producing later in the trial and offering in evidence a list of payments made under the lease, same being received as Exhibit A-36 and hereinafter referred to.

Counsel for Petitioner thereupon moved to amend his petition, all of which appears in the first amended petition, counsel stating:

"Those are all the amendments, if your Honor please; no other changes in any respect prayed for."

The court granted the motion to amend, without prejudice, ruling that a clean copy of the petition would be furnished with the amended portions in

(Deposition of Miss Mary Mathews.)

large type, and allowing Respondent to file its answer later, which answer to Petitioner's first amended petition was duly filed as appears in the record herein.)

The

DEPOSITION OF

MRS. MOLLIE ALATAU WILDER,

taken November 8, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I have known Eliza Holt Christian since 1920. I took a house at Oxford for three midsummer terms when my son was attending the university, and since then I have seen her from time to time. As to Mrs. Christian's mental condition, there is no question in my mind that Eliza Holt Christian had the mind of a child. I spoke of that to Mrs. Kentwell at the time. I have tried to converse with her. I would consider that her answers were very simple. I could not carry on any conversation with Eliza. I tried to. I have seen her at the Kentwell home in Oxford off and on for about three years. I never heard her carry on a rational conversation with anybody. I have never heard her answer more than a word or two, at any rate, if any questions were put to her. She did not seem to be able to converse. I looked upon her simply as a child sitting there.

(Deposition of Mrs. Mollie Alatau Wilder.)

I simply felt that Eliza when I was there was a child in the place. She was just there and that is all. You did not pay any attention to her, she was just there. I never saw Eliza try to read or write.

Cross Examination.

I do not mean that I have seen Eliza try to read but be unable to read; merely that I was never in a position to see her attempt it one way or the other.

The

DEPOSITION OF MRS. AGNES BERRY,

taken November 8, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I used to live in Summertown, about a mile away from the Kentwells in Oxford. I knew the Kentwells a very short time after they came to Oxford. I also knew Eliza Holt Christian who was living with the Kentwells. I left Oxford in 1918 and have seen nothing of the Kentwells or Mrs. Christian since. I should say Mrs. Christian was absolutely irresponsible and feeble-minded. I am really not responsible to say whether she was more in the society of her own people or more in the society of children.

(Deposition of Mrs. Agnes Berry.)

Cross Examination.

I could not say exactly how often I saw Mrs. Christian because the children, including my daughter, used to play together. Mrs. Christian would sometimes bring the children and then sometimes fetch them away. This would happen possibly once a week or twice a week or sometimes a fortnight. There were weeks and weeks when she would not come, and then for two weeks following she might come. It was just like a child's nurse coming.

Re-direct Examination.

When she came over with the Kentwell children, sometimes she would come and go away and then come back again for the children.

Re-cross Examination.

She never came to my house with anybody but the children.

The

DEPOSITION OF MRS. ELIZA JOLIFFE,

taken November 8, 1928 in England on behalf of Petitioner, pursuant to open commission, was read into the record as follows:

Direct Examination.

I am the wife of Professor A. E. Joliffe, formerly of Oxford University, but now a member of the faculty of mathematics at King's College at the

(Deposition of Mrs. Eliza Joliffe.)

University of London. I have lived in Oxford all my life until I moved to London with my husband about eight years ago. I have known the Kentwells and Mrs. Christian ever since within about six months from the time they arrived in Oxford in 1909. My own number was at 227 Woodstock Road and the Kentwell's was 159 Woodstock Road. My daughter was a very close friend of one of the Kentwell girls and therefore I was intimate with them. Before I knew Mrs. Christian I thought she was the children's nurse. She was always out with the Kentwell children. In all the time I knew Mrs. Christian I never heard her carry on a rational or sensible conversation with anyone. I should think a rational conversation was quite impossible. She would just say "Yes" and "No," or "It is a nice day," or "How are you," beyond that, unless you asked her questions, she would not volunteer any statement at all. As a grown woman Mrs. Christian would come to only little children's parties and never to parties for grown-up people. She was always peculiar. In all the time that I have known her, her condition has been the same.

Cross Examination.

We left Oxford in 1920. I knew Mrs. Christian was away from Oxford for a period of years, but when, I don't know.

(Following the introduction in evidence of the depositions, counsel for Petitioner read into the

(Deposition of Mrs. Eliza Joliffe.)

record the following record made November 8, 1928 before the Commissioner appointed to take the testimony of witnesses in England:

"Mr. ULRICH: As a matter of fairness, I think I have told you already it would probably be impossible for us to bring Mrs. Christian to Honolulu, and I do not want to have it appear that we thought she would probably be there. I think if there is any desire to have her examined by any specialists of yours, that would have to be done here, otherwise we are ready to close the deposition.

Mr. CASTLE: Very well, I understand the commission is now closed."

Counsel for Petitioner offered to prove that between 1910 and 1923 an additional area of the Holt lands amounting to 3919 acres had been leased for pineapple purposes. The court sustained the objection of Waialua to this offer.

Counsel for Petitioner then called upon Respondent Waialua to admit that in the event of cancellation being decreed the present value of the property would exceed in amount \$30,000, with interest, together with such improvements which have permanently inured to the property.

"Mr. CASTLE: That is even to the property and to the improvements?

Mr. ULRICH: We want to go into it. That is why we ask for that admission at this time.

Mr. CASTLE: That is correct."

(Deposition of Mrs. Eliza Joliffe.)

Counsel for Petitioner thereupon rested, except it was stipulated that certain depositions then unreturned (but hereinbefore incorporated) would be considered in as part of Petitioner's case in chief. Petitioner likewise reserved the right to call Mr. Henry Smith in reference to his testimony with Annie Kentwell.

The opening statement on behalf of Respondent was made by Mr. Leisure.)

MR. ARTHUR WITHINGTON

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I am a practicing attorney in Hawaii and a brother of David L. Withington, referred to in this action. David L. Withington died July 21, 1919. He was born February 2, 1854, in Newburyport, Massachusetts. He graduated from Harvard in 1874, being a member of the Phi Beta Kappa. He graduated from Boston University Law School in 1876 cum laude. He was admitted to all the courts of Massachusetts and was a member of the Massachusetts Bar; also of the Federal courts in that district, and practicing law in Massachusetts until 1887. (At this point the following occurred:)

"Mr. ULRICH: May I interrupt. I will admit that David Withington was a man of

(Testimony of Mr. Arthur Withington.)

the highest eminence; educated in the best colleges, and that he practiced law with eminent success.

Mr. LEISURE: And will you admit that his reputation in the community was first class?

Mr. ULRICH: Yes.

Mr. CASTLE: I think we have a right to have the record show that, in view of the fact that this is the man who is attacked in this suit.

Mr. ULRICH: I do not attack Mr. Withington's character in this suit. I merely stated the facts from information received as to what occurred in England there. Whether it imputes any measure of attack on the character of the man or not is a thing I am willing to leave to the pleadings. The intent is to show that, for some reason or other, he did not take the precautions that he should have taken in the first instance."

WITNESS RESUMES: In 1887 Mr. David L. Withington went to California on account of his wife's health and was admitted to the bar of California, practicing law there until 1903. During that time he was a member of the state senate of California and received two votes of thanks for work in the state legislature, one on the Reform of the Judiciary Act and one on the drafting of the new County Act. He was president of the Civic Federa-

(Testimony of Mr. Arthur Withington.)

tion of San Diego where he lived; was a representative of the American Bar Association, and was on the Commission to frame the Uniform Laws of California. In 1903 he came to Hawaii and formed a partnership with W. R. Castle, being admitted to the courts of this Territory, practicing law here from 1903 until the date of his death in 1919. He was a representative from here I believe on the same commission on uniform legislation. He was also a former president of the Hawaiian Bar Association, and though I don't know when he was admitted to practice before the Supreme Court of the United States, I know that he actually conducted before that court from fifteen to twenty causes.

(Counsel for Petitioner thereupon stated:)

"I have no desire to cross examine, but I want to add my personal commendation of the remarks of witness and say that we do not come before this court with any intent or desire in any way to besmirch the name of David L. Withington. We agree that he was a man of estimable character. The only charge in this case is the mistake that was made in this instance, as is apt to be made by the best of us."

MR. W. W. GOODALE

was called as a witness for Respondent, was sworn, and testified as follows:

. Direct Examination.

When I became manager on February 17, 1898, the Waialua Agricultural Company was just being formed. The old Halstead Plantation had been operating there for a great many years,—a small place with a small mill, with about 600 acres of cane. When I became manager at that time, the status of the Helemano lands (Holt lands) was in dispute, Mr. Dillingham claiming an option on a lease from certain of the Holt heirs, whereas other of the Holt heirs contested his option. Dillingham was one of the promoters of Waialua, and he was supposed to complete the lease of the Holt lands on the terms of the option, but the lease did not go through. The proposed option was for a lease at a rental of \$3500 a year for the first five years and thereafter for 45 years at $2\frac{1}{2}\%$ of the profits, but a suit for specific performance of this brought by the Plantation against Hanakaulani Holt and others failed. There was a lease prepared in accordance with the option, recorded April 6, 1899, Book 190, page 98, (which was received in evidence, without objection, as Respondent's Exhibit 5-A).

When I took charge of the plantation I found that there was a campaign on for the acquiring of lands in the Waialua District, and one John Emme-

(Testimony of Mr. W. W. Goodale.)

luth, working himself and through agents, had obtained a lease of the Holt lands from some of the heirs of the estate who also had signed the agreement and lease with Waialua. This was a lease for a term of 49 years from May 1, 1899, and covered the Holt lands (except one or two small pieces) at \$10,000 a year (which document was received in evidence, without objection, and marked Exhibit 5-B for Respondent). When I found this lease in existence I went to Bruce Cartwright, then Trustee of the R. W. Holt Estate, and asked him if he would sign our (Waialua's) lease. He said he would sign any lease if the terms were satisfactory to him, if the Holt heirs would stop scrapping among themselves.

There was another lease to Emmeluth which was likewise incomplete, covering the remainder of the Holt lands, at \$1,000 a year (which document was received in evidence, without objection, as Respondent's Exhibit 5-C).

Mr. Henry Smith of Honolulu was soon appointed Trustee of the Estate of R. W. Holt, and executed, on June 7, 1900, a confirmation of the two Emmeluth leases (Exhibits 5-B and 5-C) (the confirmation being received in evidence, without objection, as Respondent's Exhibit 5-D). Emmeluth assigned his two leases to a plantation organized by him, called the Wahiawa Sugar Company (which assignments were introduced in evidence, without objection, as Respondent's Exhibits 5-E and 5-F respectively. All of the documents covered by Exhibits

(Testimony of Mr. W. W. Goodale.)

5-A to 5-F, inclusive, were duly recorded in the Hawaiian Registry of Conveyances.)

On May 29, 1902, Henry Smith, Trustee of the R. W. Holt Estate, brought suit against the Wahiawa Sugar Company for the cancellation of their leases for nonpayment of rent, and judgment in the Trustee's favor was rendered by the Judge of the Waialua District Court, so that in 1902 the Emmeluth leases were out of the way.

When I took charge as manager I was told that R. W. Holt had refused to sign the option and I immediately set about to try to buy his interest in the land if I could. I finally succeeded in securing his interest in March of 1899 and paid him for it the sum of \$11,000. I must admit that I had at that time an exaggerated idea of the rights of a cotenant. I thought that in buying out William's one-twenty-seventh interest in that property, that the Waialua Agricultural Company would acquire some rights in the property that it would be able to use immediately. This purchase was made at the time the two Emmeluth leases were in existence. At that time we were in a land war, being in a very lively contest or competition for lands in the Waialua district. At the time of the purchase of the Chris Holt interest in 1900, I was still working on the principle of getting the whole or as many of the rights of the co-tenants as possible. It was then the plan to build a dam on the site where the Wahiawa dam now is, and, if built, the water would be thrown back upon Grants 973 and 1092. After 1902, when the matter

(Testimony of Mr. W. W. Goodale.)

of the Emmeluth leases was cleared up, Mr. John F. Colburn, who had succeeded Mr. Henry Smith as Trustee of the R. W. Holt Estate, approached me with the idea of negotiating a lease of the Holt Estate lands to the Waialua Agricultural Company.

(Witness was thereupon shown a letter dated June 13, 1904, signed by John F. Colburn, to Castle & Withington, enclosing a copy of the will of R. W. Holt, which set forth the writer's understanding of the title to the Holt properties and, in concluding, stated:

"If the Waialua Agricultural Co., Ltd., will accept a lease of Halemano and the adjoining Grants belonging to the Estate of R. W. Holt, this excluding the land of Wahiawa, I think a lease can be obtained if the rent is satisfactory.

"Can I hear from you at your most convenient opportunity?"

This letter was received in evidence, without objection, and marked Respondent's Exhibit 5-G.)-

WITNESS RESUMES: Everything of this kind relating to the lands at Waialua, whether Holt lands or other lands, were passed on to me for action, with suggestions as to price and as to what should be done. I had general charge of the land matters out there at Waialua, and this same condition continued from the early days until I left, although of course I could not, as manager of the plantation, alienate the company's property which would require action of the board of directors. I had a

(Testimony of Mr. W. W. Goodale.)

number of conversatons with Mr. Colburn. He came out to the plantation once and went all over the lands with me, with Mr. Clarence Ashford, an attorney at law and Mr. Colburn's legal adviser. Mr. Ashford is now dead. He had with him, also, a man named Collins, who I think was some kind of connection of the Holt family. They came out and we went all over the Holt lands on horseback. Then at different times we discussed the terms of a possible lease, and my suggestion was that, in making a new lease, the terms of the original lease to Waialua (Ex. 5-A) should be followed in substance, that is to say, \$3500 a year as a minimum for ten years, and then based on the profits of the land. I myself suggested to Mr. Colburn the \$3500, but Mr. Colburn would not agree, and the lease finally went through on the basis as shown in the copy of the lease dated March 17, 1905 (Ex. A-8) which called for a straight rental of \$9,000 per annum. That was Mr. Colburn's proposition.

In March 1905 the Wahiawa dam was in course of construction. The dam was finished and we closed the gates for the first time, I think, on the last day of March 1906. When I went over the Holt lands with Mr. Colburn and Mr. Ashford we considered the Wahiawa dam and discussed the possibility of bringing water from the dam over to the Holt lands. Mr. Colburn is now dead. The completed lease was delivered to me on the first day of April 1905 at the old ranch house on the Holt lands: it being delivered by Carlos Long (who was the

(Testimony of Mr. W. W. Goodale.)

administrator *de bonis non* of the Estate of R. W. Holt), John F. Colburn, and Clarence Ashford. I had a gang of men with me, and when the lease was turned over to me I put them to work.

I knew of the offer directed to Carlos Long, administrator of the Estate of R. W. Holt, dated August 23, 1905, making an offer of \$108,000 for the conveyance of a fee simple title to an 18/27 interest in the lands of the Estate of R. W. Holt at Waialua (Petitioner's Ex. B-2). The value was based on the fact that we had recently bought two of the 1/27 fee simple interests in the R. W. Holt Estate, and also a 2/9 interest in Grant 1092, at a price of \$6,000 for each of the two conveyances (including the interest in 1092) (Exs. A-11 and A-12).

When I entered the Holt lands on April 1, 1905, from the bottom up to about the 400-foot level, the land was covered with a very dense growth of lantana and klu, and some guava. The lands had evidently been neglected since Dr. Brodie's death in 1895 or 1896, Dr. Brodie having previously leased it for ranch purposes, and having done some ranching on part of the lands. There was some klu and more guava up to the 700-foot level, and from there on the growth was lighter. There was lantana and klu scattered all over the place but not as dense as down below. There was a very heavy growth of grass from the 700-foot level all the way up to where the pineapples now are. There was grass and guava,

(Testimony of Mr. W. W. Goodale.)

but not much lantana. The old Holt ranch house was at the place which I will mark as "Z". The land at the upper part of the Holt lands was light and scattered forest, and from the Holt lands up to the top of the Koolau range, approximately 20,000 feet from the upper part of the Holt lands, is all forest country, being the water shed of the mountain range. I will mark on the map "X-Y." The land on the north side of that line X-Y belongs to the Bishop Estate and, on the south side, to the Territory of Hawaii or the United States Government, and is called the Wahiawa School Land Tract, extending about to the marks "V-W." In general, therefore, the water shed belongs to the Bishop Estate and Territorial School land, and adjoins the United States military reservation. The Helemanowaters,—that is to say, the waters coming on to the Holt lands—come from this forest reservation above the Holt lands, where I have marked the letter "U", the head waters of the Helemanow stream being in the forest land of Paalaa,—Bishop Estate land. I have been in that country myself many times. The country is all forest, coming right down to the bed of the stream.

The soil on the Holt lands is a regular dark brown, or red, soil, very heavy and very dense. Before I put a ditch in to touch the Helemanow stream, I made repeated examinations from 1898, and began work I think in 1907. Where we crossed the Helemanow gulch with the siphon it was about 275 feet deep, and then it varies. The siphon is approxi-

(Testimony of Mr. W. W. Goodale.)

mately at the upper end of the cane lands. From the upper edge of the cane lands the Helemanogulch runs all the way down to the extremely lower end of the Holt lands and it is very deep, with very steep banks or gulches. It is the only stream located entirely on the lands of Paalaa, except as the Poamoho stream is in part, where I have marked it from "S" to "T". The Poamoho stream rises in the Territorial School lands. I have had repeated occasion to observe the Helemano stream. It is a stream that fluctuates enormously with the rainfall on the lands above. It is a small stream which ordinarily, in ordinary dry weather, is lost in the course of the stream. Opposite the old Holt ranch house I have seen the stream dry many times, except for a few water holes, but it was a very frequent occurrence that the entire flow of the stream was lost by seepage or evaporation before it reached the ranch house. After heavy rains it would have a flow clear to the lower ends. The further the stream goes the smaller it becomes, and at the place where the siphon crosses it would be very rare to see any appreciable stream of water running. There would be more water at the head and quite a stream of water there, but those streams flow among the boulders and it is very hard to estimate their quantity. The stream itself is largely dependent upon storm waters, just as all of those streams are. They vary enormously in the amount of water flow, both as to freshets and droughts. The normal flow of the Helemano stream would be of no value for sugar

(Testimony of Mr. W. W. Goodale.)

cane purposes. The Poamoho stream is still smaller, and runs out very quickly. I put a ditch in the Poamoho stream in 1902 or 1903, hoping to use it in irrigating the Emerson lands, but we could not get anything out of it except during freshets.

I was first a cane planter at Pahala Plantation, Kau, Hawai, in one of the drier districts of Hawai, where dry-land cane is cultivated. I had five years of experience there, then went to Paia, Maui, for a year; then thirteen months at Wailuku, Maui; then to Onomea, Hawai. At Waialua I tried out some 32 acres on the Holt lands, above the Wahiawa extension ditch, for dry-land cane purposes, at a place marked "R" on the map, planting and cultivating the cane just as I would have taken care of it in Kau, planting about forty different varieties of cane, but it had a very stunted growth and the experiment was abandoned as unsuccessful.

The latest figures that I have as to the Holt areas set forth in the petition, as to whose accuracy I have no doubt, as of May 2, 1910, are a total of 14,082.24 acres; Grant 4475 is 12,018.44 acres; Grant 973 is 1902 acres; Grant 431 is 100 acres; Grant 235 is 36 acres; and Grant 238 is 25.8 acres. In addition to that a lot of five acres was sold for school purposes.

In the properties involved there is a lot of five acres, at about the point where I marked "R" on the map, which was sold to the Board of Education since 1924.

(Testimony of Mr. W. W. Goodale.)

Referring to Exhibit F-7, Helemano #3 Reservoir (costing \$2299.70) is set out on the map, Exhibit C, at the lower edge of the Holt properties. Such a reservoir would be of no value to the owner of the Holt lands, the Waialua Agricultural Company, except that the water from it might be used on a very small portion of the land lying below it. The water that feeds this reservoir is what we call tail water from the irrigation ditches, being the water stored in the ditches, then stored in that reservoir, then taken across to other lands.

Helemano #6 Reservoir (costing \$9396.05), marked on the map, was built in 1908 and is for the night water from the Wahiawa ditch extension. To an owner other than Waialua it might be used for the water that comes from the Helemano ditch for the land, but it wasn't built for that; it was built for the night water of the Wahiawa Ditch. The storage ditch for the Helemano water is up at the 1,000-foot level, and there was no reservoir there on May 2, 1910.

The item marked Helemano Lower Ditch (costing \$7022.70) is not marked on the map. The ditch came out just between this camp here where I marked "Q" on the map. It was finished in 1905, and with it the 45 acres of Helemano was planted in 1905 and harvested in '07, and thereafter abandoned.

The Helemano Upper Ditch (costing \$22,708.35), referred to on Exhibit F-7 and on the map, was installed for the purpose of taking waters from the

(Testimony of Mr. W. W. Goodale.)

water shed above the Holt lands, and the use of that ditch would depend entirely on the ownership of the waters in such water shed.

Wahiawa Extension Ditch (one-third costing \$4791.54), referred to on Exhibit F-7, is explained as follows: the Wahiawa reservoir comes out on the lands of Kemoo (near "D"), and the Wahiawa ditch comes down to where you see marked on the map the Wahiawa ditch extension, somewhere on the place marked "K". This Wahiawa ditch extension is all of the extension ditch that carries the water from the Wahiawa ditch itself across the lands of Kemoo, Kaheeka, across the Holt lands, and then across the lands of Kawaihoa north of the Holt lands. Apparently they have apportioned one-third of the cost of the extension to the Holt lands. The purpose of the ditch was to take the waters across to the Bishop Estate lands of Kawaihoa, and the value of the ditch would depend entirely upon the ownership of the Wahiawa waters.

Helemano 54" Siphon (costing \$16,098.49) is the 54" siphon across the Helemano ravine to take the waters over across Helemano gulch and then on to the Kawaihoa lands. It was built in 1906.

Opaeula 54" Siphon (one-half costing \$4,869.97): That siphon takes the water across the gulch on the north side of the Holt lands, taking the water from the Helemano land on to Kawaihoa. Half of its entire length is on the land of Helemano and half on the Bishop Estate land, so that the cost is divided

(Testimony of Mr. W. W. Goodale.)

half to each. The sole purpose, however, is to get the water across to the Kawaihoa lands.

Waterways (costing \$5,875.10), likewise referred to, are ditches and flumes for distributing the water over the entire area of the Holt land, that is to say, waterways actually made on the cane land. The same would be true on the item for flumes (\$299.35), which are simply small, wooden portable flumes used for the distribution of irrigation water.

As to the item Roads, Bridges and Fences (costing \$3,532.35), I remember fences along the line of the government road. The roads specified were simply places left out of the cane fields to make them accessible to teams and people.

Telephone Lines (costing \$719.60) was part of the plantation system carrying the lines to the section and overseer's houses. The system was for the exclusive use of the plantation but was taken over by the Mutual Telephone Company after 1910.

The item Railroads (costing \$30,922.52) is the entire cost of the grading, the rails and ties of all the railroads that had been built on the Holt lands up to May 2, 1910. The difference between the grading and the ties and rails is kept as a matter of record, but I cannot say what proportion of this sum was grading and what would be for rails and ties.

The item Buildings, including Domestic Water System (costing \$19,051.08), would include redwood tanks, stables for animals, and houses for laborers, and an overseer's house which was on the Holt prop-

(Testimony of Mr. W. W. Goodale.)

erty. The laborers' quarters are not affixed to the ground.

The waterways are really ditches to go in the fields which might be plowed under at the first plowing. These waterways and flumes are the provision for distributing water over the fields from the main ditches and this item would not mean permanent improvements in any way.

I knew of the offer of \$108,000 apparently made by Mr. Galt. There was a court action brought after that offer, the technical name of which I do not know, but I do remember that they asked permission to sell the land for \$108,000 and the Court decided that the Petitioner hadn't the authority to sell.

Referring to the Wahiawa ditch, the water must eventually come out of the Wahiawa reservoir.

(Referring to the map, Exhibit C, witness pointed out in general the location of the lands of the Waialua Plantation, identifying the same by pointing to the map and making appropriate marks.)

WITNESS RESUMES: The Kaheeka Tract is on the Waianae or southerly side, and extends to the Poamoho gulch, to the 6-mile circle. From the Poamoho stream to the large gulch, not appearing on the map, is the land of Kemoo. At the far southerly side (not appearing on the map) the Kaukonahua stream bends up against the mountain side—the Waianae range. This stream rises principally in the school lands. From the edge of the so-called Holt lands, used for cane in 1910, up to the Kaukonahua stream, is about two miles.

(Testimony of Mr. W. W. Goodale.)

Referring to the place marked "Mill," below the lower part of the Holt lands, you can follow a line almost directly west from the edge of the map, which is what we call the Mokuleia Tract. There is first a strip called Mokuleia, then a strip called Kawaihapai, and then a strip called Kahea, way out toward Kahena Point. The lands of the plantation, therefore, running westerly from the lower tip of the Holt lands, extend for a distance of about ten miles westerly, the cane lands in that section extending five or six miles from the mill.

If Waialua did not own the Holt land the Wahiawa waters in 1910 could have been wholly used on every acre of the plantation in a general south and southwesterly direction from the Holt lands.

The waters of the so-called School Lands (marked "C" on the Map Exhibit C) out of which the Poamoho stream rises, were under lease to the Wahiawa Water Company under a land license dated April 6, 1901, by J. F. Brown, Commissioner of Public Lands, to the Waialua Agricultural Company, Limited, et al, and later transferred to the Wahiawa Water Company. The School Lands touch the Holt lands at Grant 973. This license (Ex. 5-H) allowed the licensee to enter the lands in question to construct and maintain dams, reservoirs, ditches, flumes, etc., and to impound and carry water which may be obtained thereon during the term of the charter of the Waialua Agricultural Company expiring in 1948.

(Testimony of Mr. W. W. Goodale.)

The School Lands in general extend above Grant 973, marked on the map, Exhibit C, up to the summit of the Koolau range.

(Respondent's Exhibits 5-J and 5-K were received in evidence, without objection; 5-J being a lease dated February 14, 1899, Trustees B. P. Bishop Estate to Waialua Agricultural Company, of a portion of the Ahupuaa of Kawaihoa adjoining the Holt lands to the north; term, 50 years from October 1, 1898; rental, \$3500 per annum for 10 years, and thereafter to be $2\frac{1}{2}\%$ of the gross receipts of products produced on the land demised, or, at the option of the lessors, $2\frac{1}{2}\%$ of the market value in cash of all such products; lease duly recorded. Exhibit 5-K was a lease dated May 27, 1901, Trustees B. P. Bishop Estate to Waialua Agricultural Company, Limited, covering all the water flowing on a portion of the Ahupuaa of Kawaihoa, with the right to enter upon the land, impound the water, and to use the same on the lands of Kawaihoa leased to the lessee, under lease Exhibit 5-J; term of lease Exhibit 5-K, 21 years from July 1, 1900; rental, \$1.00 the first year and \$10,000 per annum for the balance of the term; duly recorded.)

WITNESS RESUMES: Our lease with the Trustees of the Bishop Estate was for the land below a certain forest reservation fence and we had no rights of entry upon the lands above that fence, being, as I think, a tract of 4,000 or 5,000 acres of forest land lying between the forest reser-

(Testimony of Mr. W. W. Goodale.)

vation fence and the summit of the Koolau mountains. Emmeluth had a lease on this other section, namely, the 4,000 or 5,000-acre tract under lease from the Bishop Estate, dated October 7, 1899, at an annual rental of \$5,550 per annum (Exhibit 5-M). This lease was later surrendered for nonpayment of rent, but in 1908 I began negotiations with the Bishop Estate to clear up this lease situation. The lands above the Holt lands, belonging to the Bishop Estate and carrying water rights, were being surveyed by others, and plans were being made for the development of those waters, which plans were entirely independent of, and, as we thought, hostile to us. Therefore we began negotiating with the Bishop Estate for the entire tract of land, including both the Bishop Estate forest lands above the Holt lands and the Bishop Estate lands in Kawailoa already under lease to us. In December 1909 the Bishop Estate Trustees agreed to a modification of the original agricultural lease (Ex. 5-J) by which Waialua kept the agricultural land and was given the entire tract of forest land from the boundary of the School Land over to the lands of Waimea, far to the north of the map, Exhibit C, for a minimum annual rental of \$13,500, including all the forest lands controlled by the Bishop Estate in that section. After one or two slight amendments, the new lease was executed on May 5, 1910, being in fact a combination of the two prior leases, namely, Exhibits 5-J and 5-K.

(Testimony of Mr. W. W. Goodale.)

(This lease was received in evidence, without objection, as Respondent's Exhibit L, and is described as follows:

Lease dated May 5, 1910, Bishop Estate to Waialua Agricultural Company, covering the portion of the Ahupuaa of Kawailoa to the north of, and adjoining, the Holt lands, together with the right to all waters on the lands of Kawailoa, and the lands of Paalaa adjoining and above the Holt lands, said Holt lands being the lower part of the Ahupuaa of Paalaa; also the right to enter said lands for the purpose of taking and impounding said waters, digging ditches, reservoirs, tunnels, etc. Rental, $2\frac{1}{2}\%$ of the products raised on said lands, or the market value thereof, with a minimum rental of \$13,500 per annum; term, 39 years from October 1, 1909.)

WITNESS RESUMES: Under the foregoing lease, Exhibit L, the Bishop Estate had the right to take, in lieu of the cash rental, $2\frac{1}{2}\%$ of the gross proceeds, less marketing expenses. In those days marketing charges amounted to about \$10 or \$11 a ton, so if sugar were selling at 4¢ a pound it would be \$80 a ton, from which the marketing expenses would be deducted; therefore the $2\frac{1}{2}\%$ would be figured on, for example, \$70 a ton. The average production of the Bishop Estate land was about six tons to the acre, the lands being very similar to the Holt lands and being all part of the same Royal Patent and same Land Commission Award.

On May 2, 1910, there were 1595.95 acres of cane under cultivation lying below the Wahiawa Ditch.

(Testimony of Mr. W. W. Goodale.)

Under lease for pineapple purposes there were 2558.74 acres. Above the Wahiawa Extension Ditch there were 4002.26 acres of land, but below the land in pineapples. These 4002.26 acres were unoccupied land in a heavy growth of grass, lantana and guava, except 25 acres that I put into sisal and was not a success.

"Q. And was there any waste land?

A. The remainder of the land amounting to 5,925.26 was land in the gulches and forest."

During my time at Waialua I kept a record of the land transactions in the Waialua district. I was a subscriber to a sheet that came out every few days with a list of conveyances taken from the Record Office covering the entire Territory, and I had every transaction affecting sales, leases and mortgages in Waialua copied. I was familiar with sales prices and rentals paid. In my opinion the value of the land marked in yellow on the map, Exhibit C, namely, the land available for cane as of May 2, 1910, would be about ten times the annual rental paid for that and lands of similar location and condition in the District of Waialua, or a value of some \$40 to \$60 an acre. The land above the Wahiawa Extension Ditch could not be considered cane land, but that class of land could only have value for pasturage purposes at, say, \$2.00 an acre. From the 700-foot elevation to the 1,000-foot elevation which Mr. Gibb roughly referred to as possible for dry land cultivation of cane, it was dry land but I think I proved

(Testimony of Mr. W. W. Goodale.)

from actual experiment that it was not cane land. It would have no value whatsoever except for pasturage purposes. The waste land, namely, approximately 5925 acres, would not have a value of more than \$1.00 an acre.

Referring to the list of pineapple leases as of May 2, 1910 (Ex. 5-L), that is a complete list of the pineapple leases at that time on the Holt lands. The total should be 2558.74 acres. Those leases show a total annual rental at that time of \$22,000, the Hawaiian Pineapple lease of 1337 acres being at the rate of \$8.00 an acre.

In regard to the lands under lease for pineapple purposes, I do not feel competent to fix a value. There were no pineapple leases made in 1910, and no applications for leases in 1910. It was a time of depression in the pineapple business and things were very slack. We had great difficulty in collecting some of our rentals, and a great many of them were delinquent. The small growers were delinquent in the payment of their rents, as, also, was the Hawaiian Pineapple Company itself.

Referring to Exhibit D-7 (being letter of John F. Colburn, dated March 30, 1910), I had conferences at the time with different officers of the Waialua Agricultural Company about the prospective purchase of these Holt lands, and at none of these conferences did I hear any mention by any officer of the Company or anyone representing the Company of any reference to a partition suit. I also recall the letter from Lawrence Kentwell dated April

(Testimony of Mr. W. W. Goodale.)

19, 1909, Exhibit D-1; also the letter of Lawrence Kentwell dated March 30, 1910, Exhibit D-8.

In the early part of 1910 we were having a very hard time with insect pests in the sugar cane. In 1909, for instance, I reported seven million borer beetles as having been gathered and destroyed through the efforts of the school children, for which we paid 15¢ an ounce. We also had the leaf hopper disease and the black scale, besides the top rot, which affected the cane very badly. This latter was a very serious cane disease. There had also been a strike of Japanese laborers in May 1909 which lasted for about two months.

Cross Examination.

I do not think the top rot has ever been gotten under control, but in 1913 or 1914 the borers were got under control and the leaf hopper is still being fought. The prospects for sugar in 1910 at Waialua were not very bright.

The year 1910 would probably be a year which, coupled with the price of sugar, would show and reflect the result of pests of one sort or another and strikes. We began harvesting the 1910 crop in December 1909. We were still harvesting that crop in May, 1910, and its results were not then known. Looking at my report as manager at that time it appears that the actual crop of 1909 was one of the largest crops harvested on Waialua during my management until 1918. To begin with, there were nearly 300 acres more cane cut in 1909 than in 1908.

(Testimony of Mr. W. W. Goodale.)

There are so many elements to be considered, that is where the remainder of the crop was harvested other than on the Holt lands. The quality of the lands in some other part of the plantation might have exceeded those on the Holt lands, and the variety of the cane. This doesn't tell the whole story. The crop might have lessened and the average yields lessened after that time by the quality of the kind of land that I harvested during those succeeding years. The crops during the succeeding years might have been affected by drouth, which would very much account for the uniform record of production from 1910 to 1924. I would not know whether there was a very large fall of rain in 1909 and a large crop expected in 1909 without referring to my report. Whether this would cause a rather optimistic view rather than a pessimistic view would depend on how the rainfall was distributed. Beginning with 1908 we have a range price between \$91 and \$65 a share and in 1909 a range of from \$125 a share high to \$80 a share low.

In giving my testimony as to value, I mean, by value, the value to the owner of the land, and to Waialua who wanted to use that particular land for the production of cane. Those lands in my opinion were worth no more than forty or fifty or sixty dollars an acre as a unit in the production of sugar. This value I fix on ten times the rental, not received by Waialua but received by persons leasing lands to sugar companies, and you have no profit in the enterprise. Referring to the market value

(Testimony of Mr. W. W. Goodale.)

of Waialua's securities, it is quite possible that the fact that in 1910 there was a jump in the price of Waialua's stock of from \$80 and \$85 as low to \$125 to \$138 as high, indicates that the gloomy outlook in 1910 was a circumstance not within the knowledge of the general public. I have not tried to describe conditions then as "terrible" nor as gloomy. I think it was gloomy enough to have an effect, possibly a material effect. In giving my opinion as to value I take ten times the rental we paid for the land as that value, this being the rental we agreed to pay at a time when the properties were unimproved and not clear. I can see no difference between the value of the land between 1905 and 1910 notwithstanding thousands of dollars had been put upon it and it had been improved and planted in cane, and it is my opinion that there is no difference in the value of land which has not been cleared, and land which has been improved and is under cultivation. I cannot consider anything that could be done to the land that would give the land itself a greater value than as uncleared land. Irrespective of any improvements that may be put on the land or any clearing that may be done thereon, my opinion is that the inherent value of that land remains the same as it was at the time it was wholly unimproved and a mere barren waste of lantana as I have described.

It would be fair to say that Waialua plantation from the very outset planned, if it could, to acquire these Holt lands and that the various negotiations and transactions that I undertook from the incep-

(Testimony of Mr. W. W. Goodale.)

tion there were taken with a view to the ultimate securing of those lands for Waialua.

In 1899, when we purchased the interest of R. William Holt for \$11,000, it was for all his interest in the entire property shown on the map, Exhibit C, except that part designated as Grant 973, in short his 1/27 interest in all but 973. He retained that interest because he was in the cattle business and had a lease on it. The reason I paid such a very high price for properties at that time was because I believed a co-tenant had more rights than I have since found out he had.

At the time Waialua purchased the Robert Holt interest, we wanted, in order to develop the plantation, to get across the plantation with a railroad system, a permanent plantation railroad track. From the Oahu Railway & Land Company we had a right to use, for a time only, their right of way, but I wanted to build railroad tracks from the site I had selected for the mill, to carry it around the agricultural lands and across the land of Kawailoa. I couldn't get across that land without a right of way, and it was not until 1899 or 1900, when we bought the two undivided 1/27 interests (Robert W. Holt and Chris J. Holt) and acquired a co-tenant's rights, that I felt we could build across the lower tip of the Holt land. There was no other way in which I could get across to other lands of the plantation save across the lower tip of the Holt lands. The various transactions I was engaged in were not entirely my own independent acts. In anything

(Testimony of Mr. W. W. Goodale.)

involving expenditure of a large sum of money I always reported to the directors of the company for their approval. I had the dealings with R. William Holt myself, and I think he was indifferent to the sale. He was a man fairly well fixed. I paid Chris Holt \$20,000 for his $1/27$ interest in the Holt lands and for his $1/9$ interest in Grant 1092. This $1/9$ was $1/9$ of about 140 acres. I would judge the value of this $1/9$ interest would be less than \$1,000. I still entertained my previous ideas relative to the powers and rights of co-tenants. That had its effect upon the purchase, for it gave us more than one-fourteenth of that entire property and I thought that the ownership of a fourteenth of a property like that would have some rights.

The Helemano stream runs through a gulch varying in depth 268 feet at the siphon, running out in depth at its lower end. When I first saw the Holt property there had been some ranching carried on on parts, the Oahu Railway running some cattle at that time. So far as I know, whatever cattle ranching there was, was on the south side of Helemano gulch.

I have already testified that by the time the Helemano stream got down to the cane land there was very little, if any, water in the stream and at times it would be dry. At the old Holt ranch house ("Z") I have seen the stream perfectly dry, and seen it thus many times. Every time there would be a heavy rain in the mountains there would be freshets, whereas at other times there would be

(Testimony of Mr. W. W. Goodale.)

no water at all. At the time of the purchase of the Holt properties I knew that the water, other than the normal flow of the stream, was the property of the Bishop Estate, and we had no control over the forest lands. The possibility of developing water on the Holt lands had very little value. The Bishop Estate, for instance, could have sold the right to use the waters above the Holt lands to any outsider who could have used the water provided the normal flow of the stream was not interfered with. I believe that where a stream of water runs through a tract of land, the occupants of that land have the right in Hawaii, subject to the rights of any taro lands there may be along the line of the stream, to water for domestic purposes and for stock, but they have no right to take the water out of the stream and divert it to any other use. I believe the normal flow of the stream ought to be allowed to flow in its natural course, and I think the owner of the land above has absolute ownership in everything except the normal flow of the stream. This is the normal flow of the stream according to the rainfall. Although I believe the lower land has the right to have the water come down, the owner of that land as against the holders of the upper land had only the right to use the water in its normal flow for domestic purposes and stock. It is not my understanding of the law that the normal flow could be completely diverted by the owners of the waters on the upper lands. I believe it is right that the owners of the lower land, assuming

(Testimony of Mr. W. W. Goodale.)

the land reaches to the ocean, would have the complete right to the stream subject to the owners of the upper land making use of it for domestic purposes or for grazing. The owners of the upper land had the right to divert any water which arose on their land, whether they could use it for domestic purposes or not, and sell that right to others. I believe the owners of the upper lands on which the waters arose could sell all of such water to anyone they saw fit. I would like to change my testimony to the effect that the owner of the upper lands had nothing but the right to use the water on the land itself. Whoever the owners of such upper lands sold to could do exactly the same thing with the water as the owners themselves. I think the Bishop Estate had a perfect right to sell the waters of those lands above Paalaa and Kawailoa to other people than the Waialua Agricultural Company. My idea is that the normal flow of that stream could not be interfered with. There must be water allowed to run from the mauka land and run into that property. Anything in excess of the normal flow could have been taken and sold elsewhere, just as the water in the Waiahole ditch is being taken and used on Kahuku plantation. Twice I have been on a board of arbitration to fix water rights on Maui plantations, and those ditches run for miles across the country. The conditions there are the same as conditions might have been here and there were people looking for this water. I don't say that the normal flow was of no value. If anybody were to

(Testimony of Mr. W. W. Goodale.)

live on that land, make any use of it for cattle or residence purposes, they had a right to take water out of that stream for their domestic purposes. We took chances in diverting those waters from the upper lands, our chance being that the water would have been cut off above us. It would never have paid us and it doesn't pay us now to have the ditches there for the normal flow of these streams. The value of the normal flow of that stream was one of value to the owners of that property for domestic purposes and stock. The only value to the owners of the Holt property of water from the Helemano Stream was for domestic purposes and stock. We purchase water by contract from the Wahiawa Water Company at \$6.17 per million gallons delivered at the outlet of the Wahiawa Reservoir. That is for water stored at the reservoir and delivered at the reservoir.

I considered we were taking a serious risk in connection with the water situation on the Holt lands. Until the execution of the Bishop Estate lease on May 5, 1910, (Exhibit L), or at least until the conclusion of negotiations in December 1909, we had no definite assurance of being able to get the waters from the Bishop Estate lands above and east of the Holt lands, which is the tract of land controlling the waters flowing in to the Helemano ditch. We began constructing the Helemano ditch in 1907 or 1908, and before we were able to get those upper waters we had expended about \$20,000. At that time we owned 7/27ths of the Holt

(Testimony of Mr. W. W. Goodale.)

land. The developments of the land originating on the lands east of the Helemano tract consisted of the Opaepala ditch, the intake of which is on the point marked "N" on the map, which ditch ran over to the Bishop Estate lands and into which, including the storage reservoir, we expended up to 1909 about \$60,000. The water from the intakes marked "F" and "G," being from Poamoho and Helemano streams, were taken down and made common to the water that came from the Wahiawa reservoir in the Wahiawa extension ditch, and were used to the extent they could be used in the waters of Helemano and carried across to the Bishop Estate lands. In dry weather the water would be lost in the ditch. At times there would be no flow of water at all and at other times there would be a full ditch. The Wahiawa extension ditch is used for the purpose of carrying water from the Wahiawa dam through the extension ditch and on to other lands. The water carried in this ditch can be used anywhere along the line of the ditch or carried across to other lands. By reason of the fact that this ditch is used in connection with the Wahiawa dam, it would have no value in the hands of the owners of these lands although such owner might physically possess it. Without title to the water, it would simply resolve itself into a right of way. The Wahiawa water could be used on other lands, to the South of the map, Exhibit C.

(Testimony of Mr. W. W. Goodale.)

(Over the objection of Respondent witness testified:)

The Helemano ditch during the year 1909 delivered 1,904,684,000 gallons of water. During the year we added a new ditch out of the Poamoho gulch. While the stream in this gulch was small, it was subject to frequent small freshets that gave us water when the larger streams were not affected.

(Thereupon the following proceedings were had:

“Mr. CASTLE: (Interrupting) If the Court please, I think it should be understood that our objection goes to all this testimony on the flow of this water, in view of the introduction of the lease from the Bishop Estate.

The COURT: The objection may be considered as going to the entire line.”)

WITNESS RESUMES: The following year we got three billion gallons from the Helemano ditch combined with the new Poamoho ditch. In my report for 1910 I say:

“This ditch now combined with the new Poamoho ditch, has given us 3,433,102,000 gallons of water for use on Helemano and the upper Kawailoa lands.”

Up to the end of 1912, without a reservoir, it was purely a storm water proposition. I admit that. I put these figures in my report, but as a matter of fact it is perfectly absurd to me that I should have made any such report as to that flow in that ditch. Taking the Wahiawa system, which is a reservoir,

(Testimony of Mr. W. W. Goodale.)

a large reservoir holding 2,500,000,000 gallons, and is supplied by two good streams, the water being stored for use as required, there is a complete system of dams and the maximum delivery of which was 11,000,000,000 gallons a year, and it was measured by a weir and sold by measurement, and to state that one of the little gulches, the Helemano Gulch, produces in proportion 3,800,000,000 gallons, without any storage system, as compared with Wahiawa with that complete storage system, is perfectly absurd. The measurements on Helemano were taken by people who did not know how to measure water and I did not pay enough attention to it. We have not an accurate record of a real flow into that ditch. I put in a few years after 1910 what is called the Watson Self-registering Weir apparatus in some of the ditches, but I think I did not put it into this one. The ditches are not concrete lined.

In so far as the plantation railroad is concerned, I believe Waialua had a right to remove the rails and ties.

Referring to my report for the year 1909 I see that one of the first assets listed there is real estate \$706,946.70. This was all of the land then owned by the plantation and included both cane and waste land. Referring to my 1911 report showing the total in 1910 I have the cane area fee simple lands as 2,406 acres and pasture lands as 1,611 acres. We were not carrying fee simple lands on our books at that time that were held by subsidiary corporations. That when my report in 1911 was made as

(Testimony of Mr. W. W. Goodale.)

of 1910 the total acreage of 4,017 acres for the plantation itself would be the same as it was in 1910. When the plantation was organized in October, 1898, the books were open for certain entries that I was instructed to make by the treasurer, and the way that those figures were made up I know absolutely nothing about. I believe these figures were the book value but the reason for placing the value on that land I don't know. It was the value placed on the land at that time by Waialua when setting up its books, and the showing made to the stockholders and others interested in the corporation. The only thing I can refer to before my time is a deed recorded in Book 186, page 261, a deed recorded by Edgar Frank Halstead of Waialua, which reads: "All tracts of land whatever in the District of Waialua, water rights, easements, etc.; all tracts of land, leases set out, etc., for the consideration of \$630,000." If it is contended that \$300 per acre is the value of cane land it is an excess value.

The land included in that \$630,000 purchase was land entirely different from the land referred to in this suit. The location and elevation, large areas of taro land having water rights on the Kaukonahua stream, the fact that none of these were above the 200-foot level and extended down almost to the sea level.

The value of cane land in 1910, aside from water rights which might add materially to the value, and entirely apart from its use as cane land, would be ten times the annual rental. I look at this matter

(Testimony of Mr. W. W. Goodale.)

entirely from the position of a practical plantation man, and am not qualified to pass on any theoretical values. I base my statement on the fact that the lands were leased from a person who fixed the price we paid. That was the owner's opinion of the value of that land and we leased it at what he considered a fair rate of interest on his investment.

It is true that there may have been leases in the early days, such as the Waiakea lease in 1868, which were Government lands not subject to taxation, where ten times the rental would not represent present fair value, and to test this you would have to look to lands of a similar nature that could be leased for the same purpose. I would look to such average rentals and, as a cane proposition, figure what the lessee could afford to pay for it, considering that he has to pay for every crop of cane that he raises, rent for every two years of its growth, and during the initial preparation of the land and letting it waste at times, to a certain extent, as fallow land. That is the ordinary course of plantation life.

If the owner of a land feels that his piece is worth \$5.00 an acre, whereas a fair rental might be \$10.00 an acre, then nevertheless I think that the fair value of that land for taxation purposes would be ten times the \$5.00 per year, or \$50.00 an acre. In using my method I have considered the necessity of no relationship between the rental of the land and the value of the land for the purpose of reaching my conclusion.

(Testimony of Mr. W. W. Goodale.)

In 1910, of the land immediately below the tip of the Holt lands (west and to the south of the tip), about half was controlled by Waialua. Nearly all the land abutting on the Helemano stream below the tip of the Holt lands was owned or controlled by Waialua. (Witness indicated on Exhibit C certain parcels Waialua did not control.)

As of May 2, 1910, I did not classify other lands above the Wahiawa extension ditch as pineapple lands, except those under lease for pineapple purposes; judging from the fact there was not a single application for such lease from after October 1909 until way into 1911. I think the land I have classed as pasture land the directors of Waialua would not have sold for \$2.00 per acre but would have leased on a basis of 20¢ per acre for pasturage purposes. Notwithstanding such existing pineapple leases, I would have recommended the leasing of the land I classed as pasture land at a rate of 20¢ per acre per annum for a 10-year period.

Re-direct Examination.

In 1910, ten times the annual rental was the accepted basis for ascertaining the value of agricultural lands. In regard to the amount paid the Wahiawa Water Company for water delivered, it was \$6.17 per million gallons, which we took as we wanted it. We were charged with what was delivered to us upon our demand. The water from the Helemano and Poamoho streams was a storm water proposition, and in 1910 we did not have reservoirs for the storage of storm waters. The stream de-

(Testimony of Mr. W. W. Goodale.)

pended entirely upon whether rains were heavy in the mountains or not.

In estimating the value of cane lands at ten times the annual rental, I make no difference between improved and unimproved land. The lease is made in contemplation that such lands would be put into sugar. I believe ten times the annual rental was a basis both for sale and taxation. The average land purchases and sales of cane lands in the Waialua district pretty closely reflected such tax office basis. When we bought the Halstead Plantation we bought it as a going concern.

Re-cross Examination.

The Bishop Estate lands (Kawailoa), immediately adjoining on the north, closely approached the Holt lands in nature. Using the percentage basis in that lease, the rent on such Kawailoa lands would amount to about \$6.50 to \$7.00 per acre. This basis was agreed upon in 1898 when it was contemplated that the lands would be used for sugar purposes.

Re-direct Examination.

In 1908 and 1909, when the two Bishop Estate leases were combined, the fair rental was then considered and the waters above Helemano (Holt lands) added, all for the total minimum rental of \$13,500.

MR. GOODALE

being recalled, without objection, on

Further Direct Examination.
for Petitioner, testified as follows:

(Counsel for Petitioner, referring to Exhibit 17-A, which is a statement showing the cost of improvements on the Holt lands, May 2, 1910 to December 31, 1928, asked witness the following question:

“Q. I will ask you whether or not it is true that these various payments were made as indicated and charged as expenses for the current years in which they were made, before the net profit realized was entered?”

Thereupon the following proceedings took place:

“Mr. CASTLE: How is this particular fact material, how those particular payments were charged? We are not going into an accounting case at the present time. We are offering these merely to show the improvements which were put on the land. It has nothing to do with the profits; we have kept carefully away from the question of profits.

Mr. ULRICH: I propose to show that this does not represent any additional expenditure so far as the Waialua Agricultural Company was concerned, but these improvements have been put in and paid out of the land itself many times over, in the course of the management of the plantation. So far as being an additional hardship represented by an outlay, as represented here, if the true facts were

(Testimony of Mr. Goodale.)

known it would be seen that from holding these properties and putting in these improvements at this expense, there has been more benefit realized by Waialua, rather than a detriment, which goes to quite a different situation on the question of loss. If we had the case that they were out \$400,000, we would have one situation, and if we had a case in which \$1,400,000 had been already deducted and millions of dollars of profit is shown, we would have an entirely different situation, and no hardship involved at all.

The COURT: The only force as I understand that exhibit, may be as to the correction by counsel for Respondents. It is simply along the idea that they are out of pocket in the sense that they are faced with a loss for merely going forward with the use of the property on the basis of reliance upon ownership. In other words, as distinguished from a possible situation where I might buy a piece of property and be doubtful of my title, and let it lie idle on my hands until the lapse of time perfected my title, as against the proposition of buying my title and going forward with whatever inferences could be drawn one way or the other, or resuming the use of it. Whether that exhibit bears upon or supports any such inference is, of course, the ultimate conclusion which the court is attempting to make. I am simply trying to illustrate that we are not concerned or the

(Testimony of Mr. Goodale.)

court does not feel itself concerned with this exhibit, to draw a conclusion either one way or the other, that the company is out of pocket in a loss, as that is a phase of the subject which must be in abeyance until some accounting, if any is had, but purely the question of whether or not the company did utilize the properties as theirs, or did not use them as theirs; whether they relied upon their conveyance or did not rely upon their conveyance, that is the sole place of this exhibit in evidence. I did not know that Waialua Agricultural Company were trying to claim that they are out of pocket and have lost certain moneys represented by the improvements, but rather that they, by the use and exercise of ownership as if they were the owners—If I misstated it I am subject to correction.

Mr. CASTLE: Your Honor has stated and we agree with that statement.

Mr. ULRICH: My thought was,—I really wanted to be sure that it appears in record, that this was being offered to show an element of hardship which would be involved in the loss of cancellation, raising a certain detriment which would be and is being suffered by Waialua. Now, if it appears as a matter of fact, that the true situation represents not a detriment but a distinct benefit, there would be no occasion to determine upon any theory established or any idea of laches during the time

(Testimony of Mr. Goodale.)

there was to determine over the period over which it could be invoked. I believe it is the showing which should be allowed in that connection.

Mr. CASTLE: It is to show that we have gone ahead in good faith and put in improvements with the understanding that we owned it.

The COURT: Will you please read the question again?

Q. 'I will ask you whether or not it is true that these various payments were made as indicated and charged as expenses for the current years in which they were made, before the net profit realized was entered?'

The COURT: The court will permit that question. By overruling the objection the court is not intimating that it will reopen the question of what was the net profit. You may answer the question if you can."

The Court further allowed Respondent's objection to go to the line of questions.)

WITNESS RESUMES: All of those improvements were paid for out of the general funds of the Company, without any reference whatever to profits derived from the lands upon which they were placed, or any other lands of the Company. All of the improvements listed on Exhibit 17-A are new improvements on the property since May 2, 1910; except for the improvement referring to the Helemano Upper Ditch in 1917, of \$10,159.70, which was an enlargement of that particular ditch.

(Testimony of Mr. Goodale.)

(Respondent's Exhibit 17-A was received in evidence, and is in words and figures as follows:

STATEMENT SHOWING COST OF IMPROVEMENTS, MADE ON
HOLT LANDS FROM MAY 2, 1910 TO DECEMBER 31, 1928.

Date	Description	Cost
1928-1928	Pump #10 Complete (Poamoho)	\$207,137.27
	Railroads	53,066.86
	Buildings (Including Domestic Water System)	41,572.08
1919	Helemano 15 Reservoir	8,259.70
1916	" 4-A "	2,915.30
1912	" 6-B "	2,494.36
	" 6 "	1,274.95
1917	" 9-C "	2,783.10
1912	" 11 "	5,455.07
1915	" 12 "	4,321.85
1917	" Upper,	16,025.36
	" " Ditch	10,159.70
1911	" " Res. Outlet Ditch	4,695.30
	Wahiawa Water Extension Ditch (1/3)	2,896.28
	Poamoho Branch Helemano Ditch	1,148.25
	Helemano 54" Siphon	3,959.75
1918-1920	" 6" "	5,969.22
1926	" 3-A "	150.00
	Opaaula 54" Siphon (1/2)	494.62
	Waterways	24,661.40
	Lining Ditches	1,949.70
	Drainage Ditches	425.00
	Flumes	4,193.50
	Camp Sewerage	722.00
	Roads, Bridges and Fences	6,121.75
	Development of Upper Lands	1,130.05
	Telephone Lines	796.67
1928	Pump 10-A Complete	4,690.00
1922	Electric Plant	5,168.65
		<hr/> \$424,637.74)

(Testimony of Mr. Goodale.)

Each item was considered as expense for the current year, and after considering it with other expenses our profit for the year was figured.

(Counsel for Petitioner then endeavored to question the witness relative to the net profits made by Waialua during the period covered by the exhibit, which questions, upon objections made by the Respondent Waialua, were not allowed by the Court.

Counsel for Petitioner then attempted to show the details of the various net profits over the entire operations of the Company for each of the years covered by the exhibit, which, being objected to by the Respondent Waialua, objections were sustained by the Court.

Counsel for Petitioner then offered to prove the net profits made by Waialua from 1912 to date, which the Court, upon objection, refused to allow them to do, ruling that:

“The court does not feel that it is a proper proposition to include in the record the claim of an exact net profit on the entire operations of the company. Counsel will understand that the Holt area involved in this case is but a small part of the plantation area, and the Court refuses to go into the segregation at this stage of the proceedings as to what profit if any was attributable to the Holt area as distinguished from the rest of the area of Waialua or the rest of the operations of the Waialua Agricultural Company.”

(Testimony of Mr. Goodale.)

Counsel for Waialua stated:

“We will admit there was a surplus for each and every year as set forth in that exhibit.”
(Ex. 17-A.)

Counsel for Petitioner then made the following offer of proof:

“We offer to show that there is a net profit over a period of occupancy, prior to the time when this woman could have acted, then after the death of her father, of many millions of dollars. We offer to show the proportion of approximate area of these lands, which contributed to that loss considering the element of value, which also so contributed for the purpose of showing a comparison between the items of expenditure and the items of profit, as bearing upon the question of whether a detriment has resulted by reason of any laches of this plaintiff petitioner * * *”

Which offer, being objected to, the objection was sustained.)

KEAWE KANE

was called as a witness for Respondent, was sworn, and testified through the official Hawaiian interpreter as follows:

Direct Examination.

I knew John D. Holt and his daughter, Eliza Holt, down at Makaha. Eliza was between seven

(Testimony of Keawe Kane.)

and eight years old when I first knew her. I also saw her when she was a little baby. Eliza lived at Makaha with her father until she came to Honolulu. I saw her and her father both at Makaha and Honolulu. John D. Holt talked to me in Hawaiian. He and his wife likewise conversed in Hawaiian. There was no sign of Eliza being ihepa, lolo or pupule. One of Eliza's eyes was slightly slant but not very much. There was nothing unusual about Eliza to attract my attention. With her cousin, Annie Holt, they walked together, played together and talked together.

Cross Examination.

At Makaha sometimes I lived at John Holt's place, sometimes at my own home. As I remember, I came down here first from Kau, Island of Hawaii, in 1875, so that I was living out at Makaha when Eliza Holt was born. I was a workman for John D. Holt. It was I who killed and butchered the cattle if occasion arose, and I used to distribute the beef to the people there, so that I have always been in the presence of John D. Holt. Eliza Holt spoke to her mother in Hawaiian. Her mother had a little slant to her eye just the way Eliza did. Annie Holt (Kentwell) seemed a little older than Eliza.

"Q. Mr. Keawe Kane, do you remember the occasion—

"You see this gentleman sitting here, Mr. Hite?

A. I have seen him / but I don't quite recognize him.

(Testimony of Keawe Kane.)

Q. You remember—

A. By the way, whose son is he?

Q. He is Mr. Hite's son?

A. Is that so?

Q. You remember, or do you remember the occasion on which you had a talk with Mr. Hite and your son-in-law? I don't know your son-in-law's name.

A. The name of my daughter who is married,—the husband of my daughter,—the name of the husband of my daughter is Uluifi. I wonder if he is the husband of my daughter? (Indicating Mr. Hite.)"

What I actually observed Eliza Holt do is this: that she was all right so far as talk was concerned; she was all right so far as play was concerned; she was all right so far as kaukau and eating was concerned. It is true I have forgotten somewhat. You must bear in mind I am getting old. I remember certain things and certain things I do not remember.

KALUNA KEAWEKANE

was called as a witness for Respondent, was sworn, and testified through the Hawaiian interpreter as follows:

Direct Examination.

I knew John D. Holt and his little daughter Eliza Holt. I first knew them when they lived at Makaha. She was about seven years old when she and her

(Testimony of Kalana Keawekane.)

people moved up here to Honolulu. Eliza Holt used to play with the children of my husband. Eliza went to school here in Honolulu. I knew them here at their home in two different places in Honolulu. She appeared to me to be all right. I used to talk to both John D. Holt and Eliza Holt in Hawaiian. Eliza was all right and used to talk to us.

Cross Examination.

When I used to come over to see the Holts, Eliza Holt would run over and tell her father and say to him, "Here comes Mama." Her mother told her to call me Mama because I am her mother's cousin. I was born at Makaha and was raised there and lived there. I was married once before and we have sixteen children. I saw Eliza Holt after she came to town at Apua where they lived. She went to school here in Honolulu. I saw her here in Honolulu drawing pictures and writing something in English which I could not understand. Had she been a lolo she could not have drawn pictures. She was at that time fourteen.

Re-direct Examination.

Eliza Holt could draw pictures and write. I heard her engaged in conversation with Annie Holt in English, but the English language I cannot understand. I saw her read—at least heard her read—something from a book. She was drawing pictures and writing and having a conversation with Annie Holt. That is the last I saw of her.

(Testimony of Kaluna Keawekane.)

Re-cross Examination.

(Question by counsel:)

“Q. You don't know what she read and you don't know what she was writing, and you don't know what the conversation was that she was having with Annie?

A. How could I? I do not understand English?”

Eliza Holt did not have either brothers or sisters.

SOLOMON KEAU PULE

was called as a witness for Respondent, was sworn, and testified through the Hawaiian interpreter as follows:

Direct Examination.

I live at Waianae and knew John D. Holt and his daughter, Eliza Holt. They were living at Makaha. I saw Eliza Holt when she was a mere child. When I left Makaha she was about four years old. She was like other children who were playing around there.

Cross Examination.

I was a cowboy at Waianae and lived about two miles away from the place where Eliza Holt lived. All I remember is that I did not notice anything wrong with her.

DAVID HELEMANO

was called as a witness for Respondent, was sworn, and testified through the Hawaiian interpreter as follows:

Direct Examination.

I knew John D. Holt and his daughter Eliza, knowing the latter from infancy to womanhood. Her mother was my sister. Eliza Holt was not ihepa but was perfectly good.

Cross Examination.

I was living in the John D. Holt home when Eliza was born and lived there for three or four years after when I moved to Makua. I next saw her in Honolulu at the fish market in company with her mother. Eliza Holt was one of the brightest children around Makaha. In playing hide and seek she would shut her eyes and count up to ten like the other children. In counting in the game of hide and seek she was quick and better than most of the other little children, a brighter girl than Annie Holt. In my opinion, from my observation of Eliza, she was a more intelligent and brighter child than her cousin Annie Holt. I remember coming up to Mr. Hite's office with Mr. Nuuanu, Deputy Sheriff of Waianae, on December 21, 1928. I talked with Mr. Hite through Mr. Nuuanu as interpreter. On that occasion I told Mr. Hite that I knew Eliza Holt at Makaha, that she was feeble-minded or ihepa, and that she talked as though she did not know what she was talking about. I told him she was weak-minded. I told him that when she was

(Testimony of David Heleman.)

a big girl she would play with little children, that she would laugh and shake herself in a foolish way. That she would call out in a silly way, "Who are you, who are you all?" I was then relating the story of her actions in former days. When I first saw her she was weak-minded. Afterwards everything was clear. From the time I saw her commencing to play with other children up to the time I last saw her she improved herself.

Re-direct Examination.

I do not understand English. Leaving out the word "feeble-minded" Eliza Holt never did anything in my presence that caused me to believe she was ihepa, lolo, or pupule.

Re-cross Examination.

The conversation that I had in Mr. Hite's office was a conversation in which I spoke in Hawaiian through an interpreter and he spoke to me in Hawaiian.

JOE KAPELA

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live at Waianae and knew John D. Holt and his daughter, Eliza Holt. I knew them at Makaha. When I first saw Eliza she was about two and a half years old. I have not seen her since she was

(Testimony of Joe Kapela.)

about four years old. When I talked to the members of the Holt family I talked with them in Hawaiian. I visited the Holt family many times when I used to go down as a cowboy and drive cattle. This was both before and after Eliza's birth. She seemed to me all right. She had one of her eyes crossed peculiarly.

Cross Examination.

I did not see much of Eliza Holt but have heard her talk to her mother. What I mean to tell you is that I do not remember anything particular about her one way or the other, as to her mental condition.

JAMES KAAIENA HELENIHI

was called as a witness for Respondent, was sworn, and testified through the Hawaiian interpreter as follows:

Direct Examination.

I am sixty-five years old and was born at Makua. I knew John D. Holt and his wife Kaahanui. I was a cousin of Kaahanui through our grandfolks. I knew Eliza Holt when she was a baby and I should judge that she was six or eight years of age when I last saw her. I did not see her after they moved to Honolulu. While living down at Makua I would make visits to the John D. Holt home at Makaha, sometimes two visits in one week and one in another. When Eliza Holt was a little child

(Testimony of James Kaaiena Helenihi.)

she was brought to Makua by her grandfather. I saw her there at Makua and also at Makaha. I talked to Eliza Holt and she answered me. I used the Hawaiian language to both John D. Holt and Eliza Holt. She appeared to me to be a normal child.

Cross Examination.

My business at Makua was farming, fishing and that of a cowboy. It was Eliza Holt's grandfather, through her mother, who brought Eliza to Makua. Eliza would say to me, "Aloha, Papa." She recognized me very quickly when I said to her, "Aloha, pepe Kaahanui lili" (Aloha, little child—or baby—of Kaahanui). Eliza's mother had a cross eye similar to Eliza's. All that I know about Eliza Holt is from seeing her when she was brought to my place as a small baby or small child, when she was about the place from time to time, and when I would go over to visit them.

Re-direct Examination.

At Makua I also taught school, being a Hawaiian teacher.

KAMOKU KEAKUA

was called as a witness for Respondent, was sworn, and testified through the Hawaiian interpreter as follows:

Direct Examination.

I was born at Makua and knew both John D. Holt and his daughter, Eliza Holt. I am a relation of

(Testimony of Kamoku Keakua.)

Kaahanui (Eliza Holt's mother). I lived with Kaahanui and John Holt for five years; then I went back to my place at Makua. During the time I lived with Kaahanui, Eliza was friendly, would come to sit in my lap and call me uncle. She played just as other children did, and from my observation of her she was normal.

Cross Examination.

While I stayed at John Holt's house I attended school at Waianae. I was then some fourteen or fifteen years old. In John Holt's house there lived John Holt, Kaahanui, myself and my younger brother. Eliza Holt was a year old when I went there to live. I slept at the John D. Holt home and also stayed there during vacations. I stayed there because Kaahanui was my cousin's sister. I helped with chopping wood and cooking. Eliza was six when I last saw her. I do not remember Mrs. Cushingham, then Mrs. James Holt, being around there. I saw her children playing and going back to their place. There was another family there but they were living at a considerable distance from me. I don't remember seeing Annie Holt in all the time I was down there. I do remember George Holt, Chris Holt and Eddie Holt there. Eddie Holt looked all right mentally also. Chris Holt I remember also; he was living at Makaha-uka, about four hundred or five hundred yards away from the John D. Holt house. When Eliza was a child of five or six she looked all right except that her eyes were

(Testimony of Kamoku Keakua.)

crossed. There was no difference in her condition as compared with the other children, so far as I observed. If anything different happened after I left there, it is up to those witnesses to describe her condition, but during my stay there there was nothing the matter with her. I remember seeing her here all the time during my stay.

MRS. ELLEN K. LORENZEN

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Honolulu, and have lived here for thirty-nine years. I knew Eliza Holt, I think about 1902 or 3, when her mother died. I came in contact with her in my sister's home—Mrs. John Holt's home (John Holt, son of Owen Holt). At present I am the Assistant Probation Officer and have been in that work for eight years. My work as such officer consists of work in Honolulu with respect to dependent children, delinquent children and sometimes defective children. I have worked with feeble-minded children and had a chance to observe how they act. Eliza Holt always impressed me as being a very timid child. In my opinion she was not feeble-minded, ihepa, lolo or pupule.

Cross Examination.

I remember talking with you (counsel for Petitioner) when you asked me if I thought Eliza Holt

(Testimony of Mrs. Ellen K. Lorenzen.)

was an imbecile, or feeble-minded, and I said I didn't think I could describe her that way. I said she was a backward, timid child. I don't remember telling you she was not normal. My acquaintance with Eliza Holt was at my sister's home. My contact with her was not close. She would talk to my sister. All I saw was that she was normal when she was with my sister. I remember stating I couldn't state she was feeble-minded. I don't remember the other statement. She seemed to understand my sister and when she would talk to her she would answer, and she was neat and clean. I do not remember telling Mr. Hite (likewise counsel for Petitioner) in the lobby three weeks before the trial started that I had always considered Eliza Holt as lolo. I do not remember a conversation with Mr. Hite in the presence of Mr. John Holt, my nephew. I don't recall the conversation at all. I remember meeting Mr. Hite on the street when I suggested the names of witnesses who may have known Eliza. My observation of Eliza was merely casual.

MRS. MINNIE PALONEY

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Honolulu and was at the Catholic Sisters' School when Eliza Holt was there. I was in school with her for about one and a half years. I did

(Testimony of Mrs. Minnie Paloney.)

not know her before I went to school there, but I did see her after that period. I would see her going to church or meeting her in the church yard. I left school in 1898 and she was in school when I left. She played with us, playing the same games and that sort of thing. She was a very polite girl. She had drawing lessons with us, sewing lessons and pulling threads, doing that just like the other girls. I have seen her read. She dressed herself and took care of herself, being very neat. We all ate together and her table manners were always good. I never saw her being disobedient to the Sisters. We each had our own lockers and the girls took care of their own lockers, Eliza taking care of her locker just as the other girls. I do not recall anything different in her conversation from the others. Eliza was just like the other girls; she played with us, talked with us and did everything the other girls would do.

Cross Examination.

I was in the same room with Eliza Holt. I was about eleven years old and I think in the primary grade. In those days the schools were very backward in their lessons. I was not in the same class with Eliza Holt. I first went to Fort Street School but I was taken sick and stayed out for one or two years before going to the Catholic Sisters. This is my recollection. I was in a higher grade than Eliza Holt but in the same room with the same teacher. Sister Margaret was teaching at that time. I don't remember just what we read, but

(Testimony of Mrs. Minnie Paloney.)

with the Catholic Sisters we learned more catechism than anything else. I don't know what type of work the girls were doing in Eliza Holt's class. Eliza was there all the time I was there. I think I left school before she did. I don't know whether there was any change in her grade while I was there. I think Eliza was in the lowest class. I heard her in class read to the Sister. I can't tell you what I heard her read, but it was the kind of lessons they had in the class. I remember Eliza standing up in class and doing certain recitation, little articles. If there has been testimony in this case that she was not able to read the simplest words my recollection is such that I would not say that it was untrue. I cannot say that she can read anything more than the simplest words. I have not been doing any work for Waialua in this case, getting witnesses or anything. I have not personally interviewed any girls or women with the idea of getting them to testify for Waialua. I just gave the names to Mrs. Bernice Spitz.

The only firm that has offered me consideration was Petitioner's firm when Charlie Hite offered me five hundred dollars to testify for the Holts. He was the first man who called me into his office. He said, "If we win this case, Minnie, we will give you five hundred dollars. That's a big piece of money." I refused to do it. The money was offered if I could get Eliza's schoolmates to testify for Petitioner. The offer was that if I would go and get the witnesses and testify before this Court that

(Testimony of Mrs. Fisher.)

Eliza was ihepa and lolo I would get five hundred dollars.

MRS. FISHER

was called as a witness for respondent, was sworn, and testified as follows:

Direct Examination.

I live in Honolulu and at one time went to the Catholic Sisters School. I knew Eliza Holt at the school. I think I went there first in 1893 or 1894 and left in 1899. Eliza was in school all the time I was there. I was in the same class with Eliza and we moved from one room to another. She moved at the same time that I did. Eliza Holt played with us during the play periods just as the others did and she seemed perfectly normal. She did sewing, both fancy and plain. She practiced her piano but whether she did her practice right or wrong I don't know, but I heard her practice. She dressed herself, took care of herself, and her table manners were just the same as the others. She took her one bath a week, the same as we all did, getting into holokus (Mother Hubbards) for the purpose, and then all bathing at the same time. Eliza Holt took her first communion, for which they had to know their catechism by heart.

(At this point Respondent offered for identification a catechism and a church history which were later received in evidence as Respondent's Exhibits 6-A and 6-B. Respondent's Exhibit 6-A is by order

(Testimony of Mrs. Fisher.)

of the Supreme Court a part of this record and is hereby referred to and incorporated herein.)

WITNESS RESUMES: I studied from the catechism, both Eliza Holt and I studying from the same book. Every question in the book is supposed to be answered. Eliza was in the same room so she must have studied the church history. She could read but she was slow. She could also recite. We went from the first grade to the second grade. The girls studied reading, writing, geography and drawing. The girls went home once a month. Eliza was always glad, like the rest of the girls, to get out for the one day. She was normal.

Eliza Holt wrote a little poem in an autograph book I had, but I have not that book now. I remember the words that she wrote in my autograph book:

“When land and sea divides us,
And you no more I see,
Take pen and ink and paper,
And drop a line to me.”

She wrote it in one of those books and she copied it in my autograph book. All of my classmates wrote in this autograph book. You have to know practically the whole catechism by heart before you take your first communion, and Eliza Holt did take her first communion. She took her communion at the same time that I did. The catechism was studied in class and the teacher would ask questions

(Testimony of Mrs. Fisher.)

on it and you would answer those questions. The church history was also done in the class room.

Cross Examination.

I was in the small grade when I first went to the Catholic Sisters, and in the third reader when I left. I think I was about two years in the small grade. Eliza Holt and I were together in the same room and she went right along with us. It is my recollection that she was in the third grade when I left and was reading out of the third reader. I was promoted twice, although we remained in the same room. I was nine or ten when I came to school and left when I was about fifteen. I do not know how old Eliza was, but approximately the same age. I started catechism just as soon as I went to school and by the time I was in the second grade I had memorized the answers. Eliza knew the catechism as well as I did. She was slow but she got there all right. I have heard her recite the Apostles' Creed. We had to say that every day and couldn't help remembering it. Eliza was confirmed before I went to school. In order to be able to take communion in those days they put you on retreat for a couple of weeks before you take it, and you studied the catechism all the time, and you couldn't talk to any of the girls for two weeks before taking first communion. Communion now does not involve an examination as to the knowledge of church history and catechism, but at that time it did. I remember

(Testimony of Mrs. Fisher.)

seeing Eliza going to communion. We all went in a line to the altar.

In regard to the church history, the teacher would ask us questions and the children would answer. Eliza wasn't always ready. I don't say she was always ready; she had her faults. I wasn't bright myself. What we had to study she answered, though there were times when she didn't answer. The only thing we had to know fluently was the catechism. Eliza Holt was just like the rest of the girls; she made mistakes and so did I; she was not perfect, nor were the rest. I didn't say Eliza Holt was bright. She was slow but went right along. She was as bright as I am, and I am not too bright myself. I am below the average and Eliza Holt would be just about like me. I did not see anything wrong with her.

MRS. BEATRICE ROSS

was called as witness for Respondent, was sworn, and testified as follows:

Direct Examination:

I live in Honolulu and was at one time a student in the Catholic Sisters School. I knew Eliza Holt there. I started when I was about six years old and am forty-four now. We were there together for about five years. I left the school in 1901. I was above Eliza Holt but at play periods had occasion to observe her. She played in a normal manner just

(Testimony of Mrs. Beatrice Ross.)

like the rest of us. She was not quarrelsome. Eliza Holt did sewing and drawing, in sewing doing the different ways of stitching, embroidering and crocheting. Eliza took piano lessons. I have seen her dress herself and take care of herself. The girls all took their meals together and I observed nothing peculiar about Eliza. The girls took their baths together and Eliza could care for herself in that respect. I heard Eliza Holt read in the second reader. Just what she read I can't remember. There were times I went to her room and heard her read, for we older girls were sent in to look out for the smaller ones. I have seen her father come to the school and Eliza was very fond of her father. The girls went home once a month and she was very happy and delighted to go home, just like the rest of us.

After leaving the Catholic Sisters I met Eliza at a couple of places. She used to visit a sister of mine and quite often I used to be there. I have observed her at such place and she was very affectionate towards the children there. She helped me during the day to look after them. We had meals together, and the children were there. Basing my opinion on acts I have seen in my presence and conversations I have had with Eliza Holt, I believe she was normal.

Cross Examination.

I went to the Catholic Sisters in 1891. Eliza was not there then and I think I had been in the school three or four years before she came, and then we

(Testimony of Mrs. Beatrice Ross.)

were together for about five years. When Eliza first came I must have been in the third reader and I left when I was in the eighth. There was a primary grade below the first grade and Eliza Holt was in that primary grade first. Eliza was the same age as I am. I know she went as far as the second or third grade, having started in the primary, but can't remember just how far she went. I think she was about nine years old when she first came. I remember her better when she was at the age of ten or eleven. I think she was in the first grade then, as she kept being promoted a little bit. I do not necessarily remember the fact of Eliza's promotion at the time but I remember hearing it after a few years in school. This is only my recollection. Eliza Holt came there in 1894 and I think she was in the second grade in 1897. I heard her reading a little bit from the third reader. Eliza was inclined to be a little cross-eyed; she had a little defect in her eye. After leaving the Catholic Sisters I remember keeping her company and having meals with her at my sister's place, and Eliza looking after my sister's little children. She was very fond of these little children and she would help me to dress them.

(Testimony of Marie Myers.)

MRS. MARIE MYERS .

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I have lived in Honolulu all my life and went to the Catholic Sisters School when I was about seven years old, attending school until I was eighteen. I knew Eliza Holt at the Catholic Sisters. I think she came there about two years after I did. I was in a class above her. During recess we played together. I do not remember having seen her read or write but she had her piano practice periods at the same time I did. During play period I liked to tease her. She told me her father was raising chickens and pigs, and I thought it was funny because the rest of the girls never spoke of anything like that. I had an idea that it was just Orientals who raised pigs and chickens. She played just like the others did. Basing my answer on the things she did in my presence and my conversations with her and her conversations with others, at the time I was in school with her, she was normal so far as I know.

Cross Examination.

I was about fourteen or fifteen years old, I imagine, at the time Eliza Christian was playing there. My recollection of Eliza is during the play hour at recess when we all mingled together. I left the Catholic Sisters before Eliza did. She was cross-eyed. My recollection of her over this period of years is merely that as a little girl I remember she

(Testimony of Mrs. F. H. Norton.)

was there, and I remember nothing in particular except she used to say her father raised pigs and chickens, and she was cross-eyed.

MRS. F. H. NORTON

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I have lived in Honolulu all my life. I knew Eliza Holt and her cousin Annie Kentwell. I first met Eliza in the boarding school in the Convent. She was there before me. I don't quite remember when I started but I was there at the age of six or seven. I think she was there about one year while I was there. I became acquainted with her and she was very friendly. She was in a higher grade than I. I was not in the same room so I never had opportunity to hear her recite. I only knew her during the play period when she played with us just like other girls.

I knew her later out at Waikiki, as I lived near the Kentwells. I would play with her every afternoon and go in swimming. I remember she lived with the Kentwells. From my contact with her and the conversations I had with her, both in school and out at Waikiki, she seemed perfectly normal, just as normal as I was.

Cross Examination.

I am thirty-eight years old and when I went to the Convent I was quite small. Eliza and I did get

(Testimony of Mrs. F. H. Norton.)

along in school and after school I met her again. I left the Catholic Sisters before Eliza did. At Waikiki Eliza Holt was living with the Kentwells and her father. I myself did not go into their house but I would wait until Eliza came out to play with me. I was about eleven or twelve years old at that time and I think Eliza was between sixteen and seventeen. I did not know that she had a baby. We delivered her to the Kentwell house. I would not know how we would have described a person in those days who, although old in years, had the mentality of a child. I would not have known what "ihēpa" and "lolo" meant. I don't think I have even seen a person who was feeble-minded. My testimony that I am giving you as to Eliza's mental condition is my recollection of things that I remember as a little girl six or seven years old when I started to school. I definitely remember her mental condition, what she did and said to me.

MRS. WILHELMINA PIERCE

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I have lived in Honolulu all my life and went to the Catholic Sisters School when I was about nine years old. Eliza Holt was at this school before I was. I remained in school about four years. I was

(Testimony of Mrs. Wilhelmina Pierce.)

in Eliza Holt's sewing class. She could sew. I know she took music lessons. She was in a lower class than I, so I never had occasion to hear her class work. She attended communion and confession. So far as personal habits are concerned, she dressed herself, took care of her bed and took her own bath. I knew her during play periods when she played just as the other girls did. Basing my answer on her acts in my presence and any conversations I had with her, it is my opinion that she was normal. She was not ihepa, lolo or pupule.

Cross Examination.

I am forty-two. I don't remember whether Eliza left the Catholic Sisters before or after I did. I myself was in school four years but I do not know just how long during those four years Eliza Holt was in school. Eliza Holt was a taller girl than I, but as to her age I don't remember. In regard to music lessons, we went to our studies at the same time together—the same music period. I have seen her go in and take music lessons. I have not seen her at any time except there at the Convent. She was in a lower grade than I. I knew nothing about the progress she made in her studies there. I mean that I did not see anything to show that she was not normal, and that is all I mean to say.

I remember an Alice Martin who is now Mrs. Fisher. She was in a higher class than I at the Convent.

(Testimony of Mrs. Wilhelmina Pierce.)

Re-direct Examination.

I do remember that Alice Martin was there at school and in a class ahead of me. She was an older person.

MRS. MARY SIMERSON

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I was born and raised here in Honolulu. I knew Eliza Holt when I went to the Catholic Sisters. I started there in 1893 and she came in a year after I did. I was there for six years but Eliza left before I left. I have not known her since she left the school. I was not in any of her classes but I would meet her during the play period when I would talk with her. She always dressed neatly. She and I did not eat at the same table. As far as I can remember, she played just like the other girls. Her attitude towards her father was very affectionate. The girls went home the last Saturday of each month and she was anxious to get home like the other girls. Based on her acts in my presence and conversations with her, she appeared to me just like the other girls.

Cross Examination.

When Eliza Holt came to the school she was in a grade below me. The only time that I had any-

(Testimony of Mrs. Mary Simerson.)

thing to do with her was when she would be playing in the yard. She generally played with everybody, although she was with a younger group. When I went to school I was thirteen years old. All I wish to say is that what I saw of Eliza Holt I did not see anything out of the way. I did not give her any tests to see how much she knew or could learn. If any of the Sisters have said that she had the mentality of a very young child I would not be in a position to say that was not true. I would not be in a position to know anything about the progress she made in her studies? All I mean is from seeing her around there I did not see anything out of the way.

MRS. HARRY BANNISTER

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Honolulu and knew Eliza Holt at the Catholic Sisters School. I started in 1889. I knew Eliza Holt there for about four or five years though she was not in any of my classes. During the recreation period I heard her reading. She took care of herself in regard to her personal habits just the way the other girls did in the school. I ate in the same dining room with her but not at the same table. My contact with her was during the play periods when I talked with her. Basing my answer

(Testimony of Mrs. Harry Bannister.)

on her acts in my presence and on conversations had with her, I would say she was normal. She was not pupule, ihepa, lolo, or any of those Hawaiian words.

Cross Examination.

I am forty-three years old. I went to the Catholic Sisters School when I was six years old and remained there until 1900, being there for^p about eleven years. I knew Eliza Holt when she played with us in the yard. She was in a lower class than I, although pretty near my age. I remember she read from a primer and that she read pretty good. I heard her read, although I don't know the year. She read more than just the simplest words. I have seen her crochet, knit and embroider. Eliza was cross-eyed and dark complected, with dark eyes. I lived in the same dormitory with her. The girls did not have room-mates but all roomed in dormitories, each girl having her own bed. She slept in the dormitory with us. I don't remember how many girls slept in that dormitory but there were a great many of them.

MRS. M. A. WRIGHT

was called as a witness for Respondent, was sworn and testified as follows:

Direct Examination.

I have lived in Honolulu all my life and knew Eliza Holt at the Catholic Sisters School. I went

(Testimony of Mrs. M. A. Wright.)

to school in 1886 when I was about six years old. Eliza went there in 1894 and I left in 1897. I was not in any of her classes. After leaving school I saw her just once when she passed me with her father. I came in contact with her during the play period where I talked with her and where she played just like the other girls. Basing my answer on actual conversations with her, she was normal.

Cross Examination.

We did not have grades in those days—merely the ABC classes. I was in the C class. I don't know anything about the progress she made in her classes as I wasn't in the same class with her. I went to communion with the rest of the girls, but I never saw her go to communion. I slept in the same dormitory with Eliza where maybe twenty or thirty girls were. There were some younger girls and some older girls in that dormitory. The Sisters changed us whenever they liked. I have seen Eliza sewing and crocheting. I likewise saw her going to church when we girls went to confession. She did not go to communion with me but she went with other girls. I have not tried to get anybody to come here to testify for the Waialua Company.

The

DEPOSITION OF
DR. CHARLES JAMES DOUGLAS

taken in England on behalf of Respondent, pursuant to open commission, was read into the record as follows:

Direct Examination.

I live at Abingdon, England, and am a licentiate of the Royal College of Physicians in Ireland; also of the Royal College of Surgeons in Ireland. I am a member of the British Medical Society and a registered medical practitioner. I have practiced in my profession for a period of some forty-eight or forty-nine years. In the course of such practice I have from time to time had occasion to advise upon cases of mental abnormality, both feeble-mindedness and insanity.

On the 17th, and again on the 19th, of February, 1923, I went to 159 Woodstock Road. On the 19th I saw Mrs. Kentwell and explained to her the object of my visit. Then I had a conversation with Mrs. Eliza Holt Christian alone. At first I asked her a few questions to gain her confidence, as she was suffering from an attack of influenza. I wanted to find out if she thoroughly understood her position with regard to signing a document to enable Mrs. Kentwell to receive her money. She said yes, that she thoroughly understood that, and had every confidence in Mrs. Kentwell and that even if she were advised to the contrary she would take Mrs. Kentwell's advice in preference to anybody else's; that

(Deposition of Dr. Charles James Douglas.)

she had absolute confidence in her affection and love for her and good will towards her. That was the first part of the conversation. I think that would be about eight or ten minutes. I asked her other questions which I can't remember now, to satisfy myself as to her general outlook on life, which was fairly normal. I got no answer that did not satisfy me, but what the particular questions were I can't remember. Mrs. Christian's part in the conversation would be more or less a question and answer. I could not say that she really enlarged upon matters but she certainly showed no hesitation in giving me an answer to any question that I asked. So far as I observed, she appreciated my question, understood and answered intelligently.

Then Mrs. Kentwell asked me to stay for a cup of tea. I stayed and we had general conversation. During that time I observed as keenly as I could the attitude of Mrs. Christian and was confirmed in my previous impression that her attitude was quite normal. She took a certain part in the conversation but not a prominent part. They told me about their life abroad and talked about local events. Mrs. Christian struck me as a bad neurotic and was suffering from the effects of an attack of influenza at the time. Mrs. Christian told me that she was married and had lived with Mrs. Kentwell for the last seventeen years, living with her husband for one year, who was very cruel to her, and they separated. He is still alive. She further said she

(Deposition of Dr. Charles James Douglas.)

went to live in New Jersey with Mrs. Kentwell and came to England in 1909. When a child, Mrs. Christian suffered from some lapse of memory but now her memory is quite good. I gathered this during our conversation, although I mention here that, while gathering this information from Mrs. Christian, I was struck by her minute attention to details and by her evident affection for Mrs. Kentwell and her children. I now am refreshing my recollection from a letter which I wrote at the time. This is the sum total of my recollection which I incorporated in my letter immediately after the conversation. Mrs. Kentwell called on me some little time ago and asked if I were going to give evidence, saying she thought that it would be better for me not to give evidence and suggested I should not give evidence; that there was other evidence that might conflict with what I had stated. But I said, as far as I knew, the evidence I gave at the time was the truth and I should abide by what I had then stated as the facts.

Cross Examination.

I am not an alienist or an expert. My practice has been a general practice but I have frequently had to deal with mental disease as a general practitioner or I have passed my patients on. Recently, in having mental cases, I have called in Dr. Good. I retired September last. (Testimony taken November 1928.) I did not have a mental case within the last year, that is to say, a case which required consultation, but there is hardly a day one does not

(Deposition of Dr. Charles James Douglas.)

come across a case that the mental processes must not be investigated. Insanity is an acute affection, generally superinduced by some organic trouble—organic in the brain. Feeble-mindedness may also be induced by some infirmity in the brain but is generally associated more with early life and the borderline is very hard to define. Most insane persons are feeble-minded in some direction but every feeble-minded person is not necessarily insane. I am not an alienist and am not familiar with the Binet, Yerkes or Bridges test.

I explained to Mrs. Kentwell that I was coming on behalf of Mr. Garnett (a London solicitor). I knew that the question had arisen as to whether or not a certain company or individual was going to be willing to advance moneys to Mrs. Christian or to her attorney. I knew that if she was normal the moneys could be had, and if not normal they could not get the money. I understood that Mrs. Kentwell hoped they could get the moneys. After I first spoke to Mrs. Kentwell she withdrew and left me alone with Mrs. Christian. I do not know that I indicated that in my letter at the time, but I did see Mrs. Christian alone. The conversation was more in the nature of questions and answers. I cannot remember any particular sentence at this time except that I know that she said she had much confidence in Mrs. Kentwell; that she had been kind to her all her life; she had always appealed to her and would be quite willing to be guided by her in

(Deposition of Dr. Charles James Douglas.)

preference to anyone else. I don't mean to say that Mrs. Christian, of her own initiative, said that, but that was the result of probable questions on my part. I was anxious to find out, in the first place, if she understood the responsibility of signing a document for anybody to act for her, not necessarily Mrs. Kentwell. I first put the question to her to find out if I considered she was mentally capable of understanding that by signing a document she was giving power to another person to act for her. After ascertaining what I thought was a fair ground for considering she understood that thoroughly, I raised the question about Mrs. Kentwell, and she said she preferred Mrs. Kentwell to have the handling of her business affairs, although I would not swear to any particular word. As far as I can remember, I took for granted that she could read and write. There was no abnormality so far as I could observe. She was reasonably educated. Even if she were not able to compute, she might be quite able to understand a statement and to assent to it or dissent from it.

(Thereupon the following questions and answers followed:)

“Q. Did you also take it for granted she was able to compute small figures?

A. I took it for granted. There was no abnormality so far as I could observe. She was reasonably educated * * *

Q. In other words, among the things which led you to consider her normal, were not only

(Deposition of Dr. Charles James Douglas.)

the questions and answers which you put to her, but certain other things which you naturally assumed to be the case?

A. Yes.

Q. If I were to tell you some of those assumptions were totally wrong, and for example that the woman cannot add two and two, cannot make the simplest computations, would that affect your opinion in any way?

A. Not as to her being capable of understanding a statement and assenting to it or dissenting from it.

Q. Would it affect your opinion as to whether she was a perfectly normal person or feeble-minded to any extent?

A. If that were demonstrated I should certainly think that it would point to a certain abnormality in that particular direction.

Q. And would indicate she would not be wholly normal?

A. Not absolutely normal, but as I said before, there is no absolute standard of normality mentally. That might not have affected the determinative faculties at all. Even if she were not able to compute she might be quite able to understand a statement and to assent to it or dissent from it.

Q. What do you mean by understanding a statement and assenting to it or dissenting from it?

(Deposition of Dr. Charles James Douglas.)

A. There are cases where people are not able to calculate, but it does not affect the mentality as regards relationship * * *

Q. Would you say, Doctor, that a person who was mentally normal could, we will say, be put through a course of instruction extending over a period of seven years or more and never be capable of learning how to compute or make simple additions or subtractions?

A. I should say she was not normal in that direction.

Q. That she was mathematically abnormal?

A. Yes.

Q. Supposing it were to develop that she was unable to read, how would that indicate an abnormality? Would that be another direction?

A. Unable to learn to read?

Q. Yes.

A. Well, certainly that would have to be an abnormality to a certain extent.

Q. If it were to develop to a certain extent, instead of being able to read, as you assumed, she was unable to write, would that affect the conclusion you reached?

A. Not as regards being capable of understanding a statement.

Q. So all you meant to say when you said she was normal was, she was capable of understanding a statement?

A. Yes.

(Deposition of Dr. Charles James Douglas.)

Q. And assenting or dissenting from it?

A. Yes.

Q. You would not mean any kind of a statement? On the assumption that she could not compute, she could not understand the statement that three and four made seven?

A. She might accept your statement that was so, although she might not be able to accomplish the process herself.

Q. Is that what you mean by assenting?

A. Yes.

Q. In other words, agreeing?

A. Agreeing.

Q. Does willingness to agree to a statement to your mind indicate necessarily normality? Suppose I told her three and four were nine and she agreed?

A. It is hardly a parallel case to making a statement in reference to an ordinary transaction * * *

Q. If you had put the question to her, 'Would you be quite satisfied to have Mrs. Kentwell handle your affairs for you?' and the answer was 'Yes,' would you consider that a normal question?

A. Yes; but considering the evidence I had other ways of a fairly normal condition * * *

Q. The only evidence you had was the answer?

(Deposition of Dr. Charles James Douglas.)

A. That was the only evidence I required to an opinion.

Q. It was the normality of those answers that led you to this conclusion?

A. Yes."

I am not absolutely certain whether I learned the matters of family history at the tea table or whether I learned from the conversation first, but I was very glad to accept a cup of tea and the possibility of staying for a little while so that I might have confirmed, without being observed, my previous conception of Mrs. Christian's condition. I cannot remember seriatim the conversation which ensued, and I could not say definitely just what of the family history I got from Mrs. Kentwell and what from Mrs. Christian. I am in my seventy-third year. I do not recall Mrs. Kentwell calling up by telephone the day after I saw her and Mrs. Christian. I never talk professional matters over the telephone as a habit and I have not the slightest recollection of telephoning her.

The

DEPOSITION OF EDWARD L. MACK

taken in New York on behalf of Respondent, pursuant to open commission, was read into the record as follows:

Direct Examination.

I reside in Lakeland, Florida. I am an attorney at law, duly admitted to the courts of New Jersey

(Deposition of Edward L. Mack.)

and Florida. I was first admitted, on March 20, 1907. I have also, been a notary, authorized to administer oaths as such in the State of New Jersey, Union County. I was such notary on June 13, 1907.

(Witness was thereupon handed a document described on the cover as, "Certified copy of confirmation of lease, Eliza R. P. Christian to Annie Holt Kentwell, recorded in Book 298, pages 1-2, Registry of Conveyances for the Territory of Hawaii at Honolulu," which document was later received in evidence as Respondent's Exhibit 13-A.)

WITNESS RESUMES: Someone was introduced to me as Eliza R. P. Christian and I took her acknowledgment on this document. I asked her if she executed it freely and voluntarily, as the laws of New Jersey then required in the case of an acknowledgment by a married woman, using, as I remember, the statutory words. She answered in the affirmative and then acknowledged the execution of the instrument before me. I remember the occasion fairly distinctly. I have not a very clear mental picture of Eliza R. P. Christian except that, as I recollect it, she was a woman of approximately my own age and rather small and not attractive. There was nothing in her appearance or manner which impressed her upon me very strongly. As to whether she impressed me as one of rational or irrational mind, I would prefer to answer that by saying I cannot remember anything that she did or said that would lead me to suspect that she was

(Deposition of Edward L. Mack.)

not of sound mind. I did not on this occasion observe anything unusual about the appearance or demeanor of Mrs. Christian. After Mrs. Christian signed this instrument I executed it as Commissioner of Deeds in accordance with the laws of New Jersey.

(Witness was then shown a document described on the cover as, "Certified copy of deed, John D. Holt et al, and Albert Christian, to L. L. McCandless, recorded in Book 300, pages 195-197, Registry of Conveyances for the Territory of Hawaii at Honolulu," which document was later received in evidence as Respondent's Exhibit 13-B.)

WITNESS RESUMES: Refreshing my memory as to dates, the instrument was executed in my presence on October 26, 1907, at Elizabeth, New Jersey. It was signed in my presence by John D. Holt and Eliza Holt Christian. She signed the paper in my presence and I took her acknowledgment in regular form as Commissioner of Deeds. I thereupon explained to her the contents and purpose of the instrument and asked her if she executed the same for the uses and purposes therein expressed, freely and voluntarily and without any constraint, compulsion or fear on the part of and from her husband. She answered in the affirmative. My recollection is that following the execution of that instrument I asked them if their former home was in Hawaii. We talked for two or three minutes about the Islands. As to whether her acts or con-

(Deposition of Edward L. Mack.)

versation were those of a rational or irrational mind, all I can say is that there was nothing in her appearance or in anything she did or said which led me to suspect that she was not of sound mind. I had no personal interest in either or both of the instruments executed before me. As a result of the facts I observed on these two meetings, I think Mrs. Christian was normal. I would rather answer that by saying that I do not remember anything she did that would lead me to think she was not normal. There was no reason for me to scrutinize Mrs. Christian with the idea of seeing whether she was sane or not. She did not give the slightest evidence of not being perfectly all right.

Cross Examination.

I am forty-seven years of age. I am testifying to facts which occurred 21 years ago. In regard to these documents, that was the first time that I had ever been called upon to take an acknowledgment to a deed covering land lying outside of the United States, and that reason alone might explain why I can remember this occasion when I was taking so many acknowledgments. I do not exactly remember how long I had been a notary prior to that time, but after I left school I read law in the office of Judge P. H. Gilhooley in Newark for several years and my duties mainly were along the line of conveyancing. I might have been a notary public two or three years prior to 1907. I left New Jersey in December, 1909. Independent of the deeds, I do

(Deposition of Edward L. Mack.)

not remember the nature of the instrument. I have not my notarial record and have not refreshed my recollection from it. I do not think the New Jersey laws require such a record. I have no personal record of the transaction. The only times I saw Mrs. Christian, so far as I remember, were on the days of the acknowledgments, namely, June 13, 1907, and October 26, 1907. I do not think I knew any of the members of her family. My only means of refreshing my recollection is by reference to the documents themselves.

On June 13, 1907, it is my recollection that someone was with Mrs. Christian but I do not remember whether it was a man or a woman. I cannot place Lawrence Kentwell but the name has been sticking somewhere in my memory. In describing Mrs. Christian as small, I should say she was around five feet two, or three—or even one. When Mrs. Christian came with her father I remember that they did not look like Anglo-Saxons but they looked like foreigners. I suppose that suddenly dawned on me when I coupled that fact with the fact that they were conveying land in Honolulu—that they must have some native blood in them. I think the father and daughter were somewhat the same color. Because of an experience I had had shortly before that time, I was very punctilious in the matter of acknowledgments, observing every formality. The conversation at the first time was in the nature of questions and an affirmance. The second time my

(Deposition of Edward L. Mack.)

recollection is that the conversation about Hawaii was almost entirely between Mr. Holt and myself.

Re-direct Examination.

I have an independent recollection of Mrs. Christian, regardless of these instruments.

Re-cross Examination.

My independent recollection of the instruments was that they were both conveyances of lands in Hawaii. My recollection of Mrs. Christian was that she was a woman in the twenties.

(The documents above referred to were received in evidence, without objection. The first document was received in evidence as Respondent's Exhibit 13-A, and is dated June 13, 1907, and being a confirmation of a lease dated January 1, 1901, and being a confirmation by Eliza R. P. Christian to Annie Kentwell. The document is executed "Eliza R. P. Christian," and the two witnesses to her signature are L. K. Kentwell and Edward L. Mack. The acknowledgment form is as follows:

State of New Jersey
County of Union—ss.

Be it remembered, that on this 14th day of June, 1907, before me, a Commissioner of Deeds of New Jersey, personally appeared ELIZABETH R. P. CHRISTIAN, wife of Albert Christian, who, I am satisfied, is the grantor named in the within indenture, to whom I first made known the contents thereof, and there-

(Deposition of Edward L. Mack.)

upon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed, and the said ELIZA R. P. CHRISTIAN being by me privately examined separate and apart from her said husband further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed for the uses and purposes therein expressed, freely, and without any fear, threats or compulsion of or from her said husband.

EDWARD L. MACK,

Commissioner of Deeds
of New Jersey.

Following the foregoing form is the certification, by the proper officer, of Mr. Mack's authority.

The second document was received in evidence as Respondent's Exhibit 13-B. and is (omitting the certification by the County Clerk) as follows:

13-B: Deed dated October 26, 1907, John D. Holt and Eliza Holt Christian to L. L.

McCandless of land at Makua.

Recorded Book 300, pages 195-197.

KNOW ALL MEN BY THESE PRESENTS—That we,—JOHN D. HOLT—(a widower) and—ELIZA HOLT CHRISTIAN—, formerly of Honolulu, County of Oahu, Territory of Hawaii, but now residing temporarily at Elizabeth in the County of Union, State of

(Deposition of Edward L. Mack.)

New Jersey, for and in consideration of the sum of—**TWO HUNDRED DOLLARS**—, to us in hand paid by—**L. L. McCANDLESS**—, of Honolulu, County of Oahu, Territory of Hawaii, receipt of which is hereby acknowledged, have sold, and do hereby sell, bargain, convey, release and forever quitclaim unto the said—**L. L. McCandleless**—, his heirs and assigns, all right, title, interest and claim in and to all those certain lands situate at Kaawa, Makua, in said County of Oahu, Territory of Hawaii, described in Royal Patent No: 5464. L. C. A. No. 9709, to Kuli.

TO HAVE AND TO HOLD—the same unto the said—**L. L. McCANDLESS**—, his heirs and assigns forever.

IN WITNESS WHEREOF—we have hereunto affixed our names and seals this 26th. day of October, 1907.

JOHN D. HOLT (Seal)

ELIZA HOLT CHRISTIAN (Seal)

EDWARD L. MACK

State of New Jersey,
County of Union—ss.

On this 26th day of October A. D. 1907, personally appeared before me—**JOHN D. HOLT**—and—**ELIZA HOLT CHRISTIAN**—, known to me to be the persons described in and who executed the foregoing instrument, and

(Deposition of Edward L. Mack.)

who severally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein set forth; and the said—**ELIZA HOLT CHRISTIAN**—, on a private examination by me separate and apart from her husband, acknowledged to me that she executed the same freely and voluntarily and without any fear constraint or compulsion of or from her husband.

[Notarial Seal] **EDWARD L. MACK,**
Notary Public of New Jersey.)

The

DEPOSITION OF EVERETT L. BARNARD

taken in New York on behalf of Respondent, pursuant to open commission, was read into the record as follows:

Direct Examination.

I reside at New Rochelle, Westchester County, New York. I am an attorney at law, duly admitted to practice before the courts of the State of New York, having been admitted in the year 1900. I also have been a notary public, duly authorized in the City, County and State of New York and was such on June 14, 1907.

(Witness was then shown a document executed June 14, 1907, and described on the cover as "Certified copy of option, Eliza R. P. Christian to May K. Brown, recorded in Book 294, pages 246-249, Registry of Conveyances for the Territory of Ha-

(Deposition of Everett L. Barnard.)
Hawaii at Honolulu," which document was later
received in evidence as Respondent's Exhibit 14-A.)

WITNESS RESUMES: To the best of my
knowledge, the original of that instrument was
executed in my presence. It was signed by Eliza
R. P. Christian in the Borough of Manhattan, New
York City, on the date of the acknowledgment.
After Mrs. Christian had signed it I asked her if
she acknowledged it, and I followed the wording of
the acknowledgment which was a little bit unusual.
It was an old-fashioned thing and I was rather
interested in it. She said "yes" or replied in the af-
firmative. I think she said "yes". No one prompted
her to give that answer.

(Witness was thereupon shown another instru-
ment dated the 14th day of June, 1907, and described
on the cover as "Certified copy of deed, Annie H.
Kentwell and hsb. et al, to May K. Brown, recorded
in Book 282, pages 327-330, Registry of Convey-
ances for the Territory of Hawaii at Honolulu,"
which document was later received in evidence as
Respondent's Exhibit 14-B.)

WITNESS RESUMES: The original of that
instrument was likewise executed in my presence
by Annie Holt Kentwell, L. K. Kentwell and Eliza
R. P. Christian, on the date of the acknowledgment
at the same time and place of the other instrument.
On asking her if she acknowledged the execution of
this instrument, Mrs. Christian said "yes", as I
remember. No one prompted her as to her signature

(Deposition of Everett L. Barnard.)

and I took her acknowledgment in the regular and usual form. I had been down at the offices of Mr. Cook, where this took place, about this same matter previous to the signing of the paper, and my memory is I was there three times. Mr. Kentwell was there on each occasion and I think the two women, Mrs. Kentwell and Eliza R. P. Christian, were there on one other occasion other than the one when they signed the paper. I do not remember the exact conversation which then took place, other than a discussion of the transaction. I recalled I addressed a remark to the group, inquiring of them the reason for the reservation of a parcel which was reserved in the option, and one of the three replied that it had a patch of some fruit or vegetable they desired to retain, and the other two nodded an assent to that. My memory groups the two women in my mind. Neither of them stands out distinctly from the other. They were both alike, and at the time I had been told, I think, that they were related. The demeanor of both was ladylike and pleasant, and normal in every way. Nothing about them which was not characteristic of any New York woman of that age, either in their demeanor or attitude or dress. Mrs. Christian's appearance on June 14, 1907, was usual and ladylike, attractive, and not in any respect different from that of her companion. There was nothing unusual or extraordinary or noticeable about Mrs. Christian except that she was a foreigner. As to

(Deposition of Everett L. Barnard.)

whether the acts, conversation or conduct of Mrs. Christian indicated any soundness or unsoundness of mind to me, I had no thought about it and it never occurred to me. I signed as notary and affixed my seal to the documents. I was not a party to, or interested in, either of the documents.

Cross Examination.

The incident had a particular significance to me because I never had a similar proceeding. I had never done any work for Mr. Cook before or since. I had never had anything to do with real estate in Hawaii before or since, and I had never met, personally, any of the inhabitants of Hawaii before, so it does stick out in my memory for those reasons. Both of the women were foreign looking, as I remember, and my memory is that their complexions were rather dark and they were rather small. I think one was smaller than the other but just which I cannot say. My memory is that Kentwell was a pretty tall man. I think the women were shorter than he. Kentwell was more refined in appearance. His face was rather lean and his expression very alert, and he was a high-strung individual. I recall that he spoke, I think on each occasion, and that he was a wet smoker; he drooled down the lip. I think he was a foreigner but not so pronounced as the women.

As between Mrs. Christian and myself, I only recall two conversations: one was the acknowledgment of the instrument and my query as to the res-

(Deposition of Everett L. Barnard.)

ervation of the parcel. I cannot say positively who made the reply. Mr. Cook's office, as I recollect, was in the neighborhood of Hanover Square. I think I had been a notary five or six years before this, and shortly after that I gave up the active practice of the law and went into my father's business, but I have been a notary continuously ever since, although very infrequently taking acknowledgments. I know of no requirement in New York requiring notaries to keep records of acknowledgments they take. My only personal record is the documents themselves. My memory is that I drew the instruments here before me.

(The first agreement referred to, namely, the option dated June 14, 1907, was first offered in evidence by Respondent in connection with the deposition of Henry Holmes. It was next offered in evidence by Petitioner in connection with the deposition of Annie Kentwell, and lastly by Respondent in connection with the deposition of E. L. Barnard, and is in evidence as Exhibit 14-A. It is an option agreement reciting that Eliza R. P. Christian has an interest in and to certain lands under the will of her grandfather, Robert W. Holt, in the District of Waianae, Island of Oahu, which lands are called and known as the Ahupuaa of Makaha, and desires to sell the same to May K. Brown, her heirs and assigns, for the sum of \$10,000, at any time within ten years from August 31, 1906. The recited consideration paid was \$2,500 down.

(Deposition of Everett L. Barnard.)

plus certain rentals which, however, would cease upon the final payment of a further \$7,500. The document is signed and sealed "Eliza R. P. Christian." It is witnessed by E. L. Barnard, his acknowledgment also appearing as follows:

City of New York

County of New York

State of New York

United States of America—ss.

On this 14th day of June A. D. 1907, personally appeared before me ELIZA R. P.

E.L.B.

and known to me to be

CHRISTIAN satisfactorily proved to me to be the person described in and who executed the foregoing instrument, by oath of L. K. Kentwell, a credible witness for that purpose to me known and by me duly sworn, and she, the said ELIZA R. P. CHRISTIAN, duly acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein set forth.

[Seal]

E. L. BARNARD

Notary Public, N. Y. Co.

My term expires March 30th, 1909.

Following the foregoing acknowledgment is the certification of the County Clerk as to Mr. Barnard's authority. The document was duly recorded in the Hawaiian Registry of Conveyances.

(Deposition of Everett L. Barnard.)

The second agreement referred to, namely, the deed dated June 14, 1907, ~~was~~ first offered in evidence by Petitioner in connection with the deposition of Annie Kentwell, and next by Respondent in connection with the deposition of E. L. Barnard, and is in evidence as Exhibit 14-B. By this deed Annie Holt Kentwell conveys to May K. Brown certain interests of hers at Makaha, Oahu, both in fee simple and in lease. Eliza R. P. Christian and Lawrence Kentwell joined in the deed by way of consent. Among the interests conveyed in the deed are the following, with also the following reservation:

“THIRD—All right, title and interest in and to that certain lease and the premises therein described, made by—ELIZA R. P. CHRISTIAN—to—ANNIE HOLT KENTWELL—, dated August 31st, 1906, and recorded in Liber 283, folio 459, reference thereunto being had will more fully and at length appear;

“FIFTH—All right, title and interest in and to that certain lease and the premises therein described, made by John D. Holt, Jr., et al to Annie Holt Kentwell, dated January 1st, 1901, and recorded in Liber 257, Folio 371.

“RESERVING—however to me said—ANNIE HOLT KENTWELL—all my right, title and interest of in and to that certain tract

(Deposition of Everett L. Barnard.)

of land consisting of about ten acres with the improvements thereon and appurtenances thereto known as the Homestead of John D. Holt Sr., and identified as the tract reserved in the former transfer by said John D. Holt Sr. to O. J. Holt, his brother now deceased, and further reserving all the rights or interests which I may hereafter acquire in and to the above described premises by and under the will of said Robert W. Holt, deceased, on the decease of said John D. Holt, Sr., anything herein contained to the contrary notwithstanding."

Then follows the release of L. K. Kentwell, husband of Annie Holt Kentwell, and thereafter appears the following:

"AND—, I,—ELIZA R. P. CHRISTIAN—, for and in consideration of the said sum of FIVE HUNDRED DOLLARS (\$500.00)—, by said—MAY K. BROWN—, paid to the said —ANNIE HOLT KENTWELL—, and for the further consideration of the sum of One Dollar (\$1.00), to me in hand paid by the said—MAY K. BROWN—, the receipt whereof is hereby acknowledged, do hereby consent and agree to the assignment of that certain Indenture of Lease made by me as Lessor, on the 31st day of August, 1906 and duly recorded in Liber 283, folio 459, to the Lessee therein named Annie Holt Kentwell and to the assignment, convey-

(Deposition of Everett L. Barnard.)

ance and transfer of all the right, title, interest, claim and demand and right of possession of said Lessee, Annie Holt Kentwell, to the said May K. Brown, and to her heirs, executors, administrators and assigns, forever.

"IN WITNESS WHEREOF—, we have hereunto set our hands and seals, at the City, County and State of New York, Borough of Manhattan, this 14th day of June, A. D. 1907.

ANNIE HOLT KENTWELL (Seal)

L. K. KENTWELL (Seal)

ELIZA R. P. CHRISTIAN (Seal)

Witness to signatures:

Initialled correction 2nd page made before execution.

E. L. BARNARD.

City of New York,

State of New York

County of New York

United States of America—ss.:

On this 14th day of June, A. D. 1907, personally appeared before me—ANNIE HOLT KENTWELL— and —L. K. KENTWELL—, known to me to be the persons described in and who executed the foregoing instrument and —ELIZA R. P. CHRISTIAN—, satisfactorily proved to me to be and known to me to be the other person described in, and who also executed the foregoing instrument, by oath of L. K. Kentwell, a credible witness for that

(Deposition of Everett L. Barnard.)

purpose, to me known and by me duly sworn, and they, the said —ANNIE HOLT KENTWELL—, L. K. KENTWELL— and —ELIZA R. P. CHRISTIAN—, severally acknowledged that they executed the same freely and voluntarily and for the uses and purposes therein set forth; and the said —ANNIE HOLT KENTWELL— upon private examination by me, separate and apart from husband, —L. K. KENTWELL—, further acknowledged that she executed the same freely and without fear, compulsion or constraint of her said husband.

[Notarial Seal] E. L. BARNARD,

Notary Public, N. Y. Co.

My term expires March 30th, 1909.

Thereafter follows the certificate of the County Clerk as to Mr. Barnard's authority.)

The

DEPOSITION OF
MISS ELIZABETH MARTZ

taken in New Jersey on behalf of Respondent, pursuant to open commission, was read into the record as follows:

Direct Examination.

I live in Elizabeth, New Jersey, and have lived there for about thirty years. I was born October 2, 1879. I was acquainted with Eliza Holt Christian in the years 1906, 1907 and 1908. She lived next

(Deposition of Miss Elizabeth Martz.)

door to me and lived there for about three or four years. We have talked together I should judge about once a week. We discussed just things in general. She was a short and dark lady, appearing to be a Jap. Basing my answer on the acts, conversations and conduct of Mrs. Christian, she was rational. I never saw any indication of temper on her part. Basing my answer on what I may have observed in the conduct or appearance of Eliza Holt Christian, as indicating anything relative to her mental condition, she was all right—she was all right in every way.

Cross Examination.

I suppose Mrs. Christian was about twenty when she was here. I do not remember distinctly everything that happened twenty years ago. Eliza's father and one young man was there. I don't know what his relation was, but there was Eliza's father and also a cousin or a sister—I don't know which. She was some relation anyway. The young man was, I should judge, about twenty-seven or so. They all appeared to me to be Japs. I think there were three children of Mrs. Kentwell. At the time we were in the milk business; both my mother and I went out to deliver milk. Occasionally, when we had milk for sale, they would come in and get the milk. We did not call on each other particularly but just as a neighbor we spoke as neighbors do, just a few words. I never visited in their home. I know nothing about Eliza's habits about the house or whether

(Deposition of Miss Elizabeth Martz.)

she could write or read or handle money. I never saw her write or read, know nothing of her ability to care for herself, never saw her handle money in any way. She had never no money. I did not know that she had an illegitimate child while she was living in Elizabeth. We were busy and I hadn't much chance to gaze around. I didn't notice her being with child. She would come in, however, once in a while, to get milk. I only saw her occasionally and did not see a great deal of her. I never noticed anything out of the way—she was sane. I never had occasion to test her mentality or anything like that, but she was all O. K. all right. I never saw her use a telephone and I don't know whether they had one in their house. She was not a member of the Negro race but to my opinion had a Jap appearance. I cannot remember any one thing she ever said to me.

Re-direct Examination.

I never saw anyone leading her around. She came over to my place herself freely; and when she came to my place and when I talked with her she was alone.

Re-cross Examination.

I do not know who the particular friends around there of the Kentwells were at that time, nor who used to call on them.

MISS A. Z. HADLEY

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I have lived in Honolulu many years and have taught school all of my life. I knew Eliza Holt indirectly with her cousins. I met her at her cousin's, Annie Holt Kentwell, down at her home in Waikiki. I visited Annie and Eliza was staying with Annie. I talked to Eliza just the same as I did with Annie. I wouldn't think she was anything but normal, so far as I saw her—so far as I had conversations with her. I remember nothing particularly about her except that she was a young girl playing around there at her cousin's home. I had conversations with her. We had tea together. I was there with the Sisters—Sister Beatrice and Sister Albertina from St. Andrews Priory. I think Eliza was there for a very short time attending St. Andrews Priory (an Episcopal school). I saw her there at the Priory with the other children. I am sure I would have noticed if she had not been normal. I would look after the children there at the Priory for the Sisters when the Sisters went out. I was at the Priory for four months, I think, in 1900 or 1901. I came down from Lahaina to spend the Christmas holidays and had to stay here on account of the plague in Honolulu. Practically, the Priory was my home whenever I came down from the other islands.

(Testimony of Miss A. Z. Hadley.)

Cross Examination.

I spent some time at the Priory every year from 1894 to 1908. I only remember Eliza at her cousin's, Annie Holt, at Waikiki. I have no distinct recollection of her at the Priory, and can't tell exactly when she was there. I only knew she was there. The only time I remember her was at Annie Kentwell's. I don't know how many times I saw her at Annie Kentwell's. I think Eliza was there most of the time. I couldn't remember the particulars of any conversation thirty years ago.

• (Thereupon the following questions and answers followed:)

“Q. And when you tell us she appeared normal, or as far as you could see everything was all right, all you mean to say is that you didn't notice anything out of the way when you were, that is all, is it?

A. Yes.

Q. You understand—I do not know whether you do understand—we are not talking about a person who is crazy or demented. We are trying to gauge the mental age of the person?

A. Yes.

Q. You didn't give her any tests or try to see how much she knew about any particular subject with a view to determining whether she had a four-year old mentality or a six-year old mentality or an eight-year old mentality?

A. No.

(Testimony of Miss A. Z. Hadley.)

Q. And you are not in position to say what the age of her mentality was?

A. No, but I have come into contact with so many children in my thirty years of teaching I could tell pretty well.

Q. If you had made a test you could tell?

A. No, I wouldn't have to make a test. I could tell pretty nearly."

I am merely giving you my present recollection of something that happened a great many years ago.

Re-direct Examination.

Eliza was there and we talked to her and she would come over and talk to us.

MRS. ANN PARKER

was called as a witness for Respondent, was sworn and testified as follows:

Direct Examination.

I live in South Kohala, Island of Hawaii. My husband is tax assessor there. I formerly lived in Honolulu before I got married. I went to school at the Catholic Sisters Convent and was three years old when I started. I was there a great many years. I knew Eliza Holt there very well. I was there ahead of her and I was there as long as she was in school. I was not in her class but Eliza and I worked together. She could read perfectly and

(Testimony of Mrs. Ann Parker.)

write as well as I. She took piano lessons. She could sew, she was very clean and tidy. She was never disobedient to the Sisters. We played together during the play period. She played like other girls. I knew her outside of school at her home. Eliza and I were playmates and very intimate. Basing my answer on the acts I saw her do in my presence and conversations I had with her, she was in my opinion very normal. Such Hawaiian words as "ihepa," "lolo" or "pupule" were never used in those days.

Cross Examination.

I was born in 1874 and started at the Convent when I was three years old. I was married when I was twenty and had left the Convent perhaps a year before I married. It is my best recollection that I remained in the Convent until I was nineteen, something like that. I was married at Kealia, Kauai, remained three months there after my marriage, and then took a trip around the world. I am living on Hawaii now with my second husband. I was at the Convent most of the time Eliza was there. When I was in the Convent as a boarder Eliza was also there as a boarder. At first she took music. She was there five years and I was there all the time. I was married in 1894 and was born in 1874. After I was married I used to visit the Convent. The name of my first husband was Stephen Gray Otis King. My wedding anniversary was December 27th, but I don't remember whether the year was 1894. My maiden name was Mary Cummins.

EMILY WERY HUDSON

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Hilo, Hawaii, but at one time lived in Honolulu and attended the Convent of the Sacred Hearts in Honolulu. I knew a girl there by the name of Eliza Holt. I started school at the Convent somewhere around 1890. I remember Eliza just before I left school in 1898. Eliza and I were in the same room but she was in a different division. In play periods we used to be together and she was all right. She used to talk to me and I to her, and we conversed together. I can't remember what our conversation was about but she seemed to be all right. I don't remember whether we had sewing during the play periods. The girls used to take music lessons but I don't remember about Eliza. She played like the other girls. Basing my answer on the conversations I had with her during these play periods, and her acts during such periods, she was normal.

Cross Examination.

I think I was about eight years old when I first went to the Convent. I don't remember when Eliza first came but she was at school some time before I left. Eliza was younger than I. There were two divisions in our room; she was in one and I was in the other. Eliza and I were rather chummy; we used to sit together and chat together. This was when I was about sixteen or seventeen years old.

(Testimony of Emily Wery Hudson.)

She was a smaller girl than I, and younger. When I say she was normal, she knew everything she was doing. She knew what she was talking about. I never saw anything out of the way. I don't remember anything about reading or mathematical problems. She was not in my division.

MRS. C. J. HUCKSTEIN

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live at Olaa, Hawaii, but was born and raised in Honolulu. I went to school at the Sacred Hearts Convent, starting about 1889. I think I left in 1900. I knew a girl there by the name of Eliza Holt. She came after I had started to school and I was ahead of her. I had no occasion to hear her recite in any of her classes. I was a big girl and she was a little girl at that time, so we didn't have any mingling in the lessons. I had no contact with Eliza during the play periods but did see her at school for some four years.

After she left school I met her on the street occasionally. I always stopped and chatted with her. She recognized me. In school I did not talk to the younger girls very much but I would meet Eliza occasionally and stop and have a little chat with her, ask her how she was, and say hello, Eliza, and

(Testimony of Mrs. C. J. Huckstein.)

she would always smile and talk to me. I never saw anything about her that would make me think she was not normal. I am a school teacher and have been teaching school for fifteen years.

Cross Examination.

I did not have close or intimate association with Eliza at the Convent and I know nothing about her studies. My observation of her was merely a casual one. I never heard her recite and do not know what progress she made in her studies. I do not know whether she could read or write or do sums. My occasion of coming in contact with her would merely be when all the girls were together somewhere for some reason or other. I would see her at church services, in the dining room and at assemblies for the whole school. I had no particular reason for singling her out for observation. I would just ask her how she was and if her father had been to see her lately. She loved her father. After leaving school I saw her several times around town for a period of two, three or four years after I left school. She was just like any other child, so far as I could see.

Re-direct Examination.

After leaving school I used to meet her now and then in the fish market and sometimes sitting in front of where McInerny's Shoe Store is now; I think Mr. Kentwell had an office upstairs. Those are the occasions when I talked with her.

(At this point it was admitted by both counsel that the stenographer's note books in the annul-

(Testimony of Mrs. C. J. Huckstein.)

ment proceedings in the matter of Eliza R. P. Christian, in Honolulu in the year 1904, could not be found in the records of the local court.)

(At this juncture counsel for Waialua offered in evidence the annulment proceedings being numbered 2935 entitled: "Eliza R. P. Holt, by Annie Holt Kentwell, her Guardian, vs. Albert Christian." The only record on file was the decision and decree, the decree incorporating the allegations of the petition. The record was admitted, the same taking the number of the record at that time, Divorce No. D. 2935 and also Exhibit 7.

The decree reciting the allegations of the petition sets forth among other things the following language:

"That since her birth the said minor, Eliza R. P. Holt, has been a person defective in intellectual powers and incapable from mental imbecility of taking care of her own person and property * * * up to the present time never has the said Eliza R. P. Holt been capable of having or understanding the ordinary relations of life, being possessed only of the most infantile intelligence, and that it has been a notorious fact and is at this time among those who know her that the said Eliza R. P. Holt has been a mental imbecile and been incapable of knowing or conducting her affairs in any manner whatsoever and now is, and always has been a mental imbecile."

(Testimony of Mrs. C. J. Huckstein.)

After such recitation the decree reads:

"Whereas, after full consideration of said testimony and of the arguments of counsel for the respective parties, said Honorable George D. Gear, Second Judge as aforesaid did render and file his decision herein on the 4th day of March, 1905, finding that plaintiff has not shown such a case of incompetency as to justify the court in annulling the marriage; and

"Whereas, the term of office of said Honorable George D. Gear has expired without any decree having been made or entered in said cause; and

"Whereas, the Honorable Alexander Lindsay, Jr., is the successor in office of said Honorable George D. Gear;

"NOW, THEREFORE, it is hereby ordered adjudged and decreed that the marriage of and between said Eliza R. P. Holt and the said Albert Christian is not void for any cause or reason alleged or set forth in plaintiff's said petition, but that said marriage was and is valid and legal and binding on the parties thereto; and that said petition be and the same is hereby dismissed with costs.

ALEXANDER LINDSAY, JR.,

Second Judge of the Circuit
Court of the First Circuit.

Dated this 6th day
October, A. D. 1905."

(Testimony of Mrs. C. J. Hueckstein.)

The decision in the case reads:

"In this case it seems to me that the plaintiff has not made out such a case as under the authorities is required to be made out in order to entitle her to a decree annulling the marriage between herself and the defendant. While it seems to me that it perhaps would have been much better for the plaintiff never to have married, and the conduct of the defendant in his wooing and subsequent marriage is not to be commended but should on the contrary be severely criticised, nevertheless the plaintiff has not shown such a case of incompetency as to justify the court in annulling the marriage. For this reason a judgment should be entered for the defendant. *Gear, Judge.*"

(Counsel for Petitioner informed the Court that he was in receipt of a cable from the Commissioner in England theretofore authorized to take the written depositions of Annie Kentwell, on the reopening of her cross-examination, and of Mr. Bennett, the bank manager in Oxford, which latter witness had charge of, or could testify to, the personal bank account of Lawrence K. Kentwell during May 1910. Counsel for Waialua objected to the reading of the cable, whereupon counsel for Petitioner agreed that anything that appeared in the cable was for the advice of court and counsel and

(Testimony of Mrs. C. J. Huckstein.)

not to be regarded as evidence. With this understanding, counsel for Waialua consented that same be read, and counsel for Petitioner read the cable, which stated in substance that Mr. Bennett had been authorized to and was now prepared to testify to the said Kentwell account, and that he would testify that 7164 pounds, 15 shillings and 10 pence were deposited to the personal account of Lawrence Kentwell on May 10, 1910. Counsel for Petitioner represented to the Court that Mr. Bennett's answers to the other matters sought of him by the interrogatories having been answered and being en route to Honolulu, he moved to re-open Petitioner's case for the purpose of taking the additional testimony referred to. On objection of counsel for Respondent the Court ruled that testimony as to whether Eliza R. P. Christian got the money on May 2, 1910 would be of very slight benefit to the Court in arriving at the conclusion that she was incompetent, and that it would likewise be immaterial as to just which one of the group received the money at the time it was paid, and ruled:

"The Court at this time will deny the request for a motion to hold up the case further on this testimony."

Counsel for Petitioner stated that he would present the matter in the form of a written motion, to which the Court ruled that on the oral motion presented it was not prepared to grant the motion.)

MRS. FRANK F. FERNANDEZ

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Honolulu and at one time went to the Catholic Sisters School. I was born in 1882 and started school at the Catholic Sisters when I was six or seven. I left there in 1902. I knew Eliza Holt at the school but she was in classes a great deal below me. I knew her there all the time that she was there. I did not come in contact with her in any of her classes but did in going to Mass and going to church. She played the piano. I taught her myself for about two months, giving her music lessons on the piano. I taught her a little exercise,—the first study book, the beginner's book. It took me about a month or two months to teach her that very same thing. That is the only thing I taught her. In the end she knew it. I think she was a shy girl but I did not notice anything wrong with her.

Cross Examination.

Eliza did not learn very quickly and she was not bright. She knew very little music, as I was just teaching her. It was beginner's music. I didn't notice anything wrong with her. She seemed perfectly all right to me. There was nothing about her to attract my attention. I took her like any other girl. I don't remember the year I started teaching her music, but I do remember teaching her. When I got through teaching her she would just go to the

(Testimony of Mrs. Frank F. Fernandez.)

school yard or she would go to her room and I to mine. I was helping her try to practice during practice hour at school. We had to practice piano for an hour and at that time they asked me to help her in taking her lessons. The teacher would take her twice a week for half an hour and I helped her along during the practice hour. The exercise was some five or six lines. I would teach her with the right hand and teach her with the left hand, and when she knew both she would play both hands together. She already knew the notes, already knew her lesson. I was simply helping her to see that she got along with her practicing. I had a little trouble with her but she got along all right later. I was just asked to teach her that, so she could play it before her father.

MRS. CLEMENT K. QUINN

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Honolulu and have lived here a number of years. I went to school at the Sacred Hearts Convent. I was born in 1876, first going to the school when about three years old. I think I left when I was about seventeen. Eliza Holt had just come to school as I left. I think I was there for about two years while Eliza was there. I am all

(Testimony of Mrs. Clement K. Quinn.)

mixed up about the dates, as I haven't thought about that. Eliza was not in any of my classes. I came in contact with her during play periods. I talked with Eliza and she to me. After she left school I used to meet her on the street and talk with her like I did with the rest of the girls. She knew me then and talked with me. In my opinion she was a normal girl.

Cross Examination.

At the Sacred Hearts my name was Lulu McWayne. Eliza was a regular boarder. I used to go to the Convent for music. After I left school I went every day for nearly two years taking music lessons. It is possible that it was during that period that I saw Eliza. Although not in her class, we all knew what went on in that school. I saw her recite and heard her recite. I think I can recall Eliza reciting over this period of years. She was in the primary grade. We all went into one room on certain days and heard them recite. I don't remember the year, nor do I remember any particular recitation. I was in school about two years after she came there so I know it was during that time that I heard her recite.

MRS. FRED PETERSEN

was called as a witness for Respondent, was sworn, and testified as follows.

Direct Examination.

I live in Kaimuki, Honolulu, and went to the Sacred Hearts School on Fort Street. I knew a girl there by the name of Eliza Holt in 1896. I was in school at the Convent for four years. Eliza and I were in the same class but different divisions. I also came in contact with her during music hours when we were taking music lessons on the piano. I took my music lessons sometimes before and sometimes after her, but from the same teacher. Eliza Holt talked to me. She was in a different dormitory from me. I met her also in the yard during school hours when we played together. I did not know her after she left school. From the contact I had with her as a school mate, in my opinion she was normal.

Cross Examination.

I am forty-five years old. I don't remember how old Eliza was in comparison with my age. She was about my size. Whether or not she was in a higher or lower division in my room I don't remember—it is so long ago. When I said that Eliza was a normal child I mean by that that I saw nothing out of the way.

W. A. GREENWELL

was called as a witness for Respondent, the oath being waived, and testified as follows:

Direct Examination.

I am a member of the Hawaiian Bar and was admitted in 1905. At present I am connected with the firm of Robertson & Castle and in 1909 and 1910 was with the firm of Castle & Withington. I had been there since 1905.

(At this point witness was shown Exhibits 1-A, 1-B, 1-C and 1-D for identification, the same purporting to be copies of letters from Eliza Christian to James L. Holt, dated respectively December 7, 1909 (1-A), December 7, 1909 (1-B), January 29, 1910 (1-C), and March 11, 1910 (1-D), and was asked if he had ever seen those letters before, to which witness replied that he had. Thereupon the following proceeding took place:)

“Q. When and under what circumstances did you first see those copies? Just explain to the court.

A. I think it was sometime in the month of April, 1910, Jimmy Holt,—J. L. Holt, came into the office to see Mr. Castle, W. R. Castle. Mr. W. R. Castle wasn't in and he spoke to me. I asked him what he had come in for and he said he had come in with reference to this Holt purchase; that he had some correspondence that he wanted to see Mr. Castle about, and leave it to me, and I read the correspondence and after I

(Testimony of W. A. Greenwell.)

had read the correspondence it was turned over to one of our stenographers with instructions to have these letters copied for our records.

Q. What was done with the originals, Mr. Greenwell, if you know?

A. The originals were handed to Mr. Castle by myself, for him to read them. Before those letters went out of the office I had compared them with the stenographer who made the copies.

Q. When you say "went out of the office" what do you mean by that?

A. These letters were turned over to Mr. Holt afterwards.

Q. Did Mr. Holt have anything to say to you about the originals, as to whether or not he wanted them back?

A. Yes, he said he could not leave them with us and wanted to take them away.

Mr. LEISURE: I offer these letters in evidence."

(Counsel for Petitioner objected to the admission in evidence of the letters upon the ground that they were typewritten copies of letters; that the witness did not purport to know the writing or signature of Eliza Christian, that he merely testified to having copied certain writings handed to him by Mr. Holt, and that such identification was insufficient and that there was no evidence that the material contained in

(Testimony of W. A. Greenwell.)

the writing had been produced by Eliza Christian.

“The COURT: It may be relevant, Mr. ULRICH, upon the question as to whether or not what notice, if any, there was, the purchaser had at the time of the purchase, bearing upon the question irrespective of whether the letters were received from the purported signer or not. That would have a bearing upon the question of information, that information was at hand in the mind of the purchaser at the time of the transaction in question.

Mr. ULRICH: That might be true if they are received only for that purpose. If they are offered for the purpose of showing that the letters were written in fact by Eliza Christian, I submit that they could not prove it by this witness. They might have a bearing upon the question as to what the mental attitude of the purchaser was, from material handed to him by Mr. Holt and on that theory I imagine they might be received.

The COURT: It might be relevant on the question of Mr. Holt's testimony in this case,—in connection with that testimony and the testimony of this witness that these documents emanated from Mr. Holt to the purchaser in question, and that would be evidence to be taken into consideration, with Mr. Holt's statement that he called attention to the purchaser that the seller was incompetent.

(Testimony of W. A. Greenwell.)

Mr. HITE: He did not so testify, your Honor.

Mr. ULRICH: I don't remember.

The COURT: There is somewhere where it was expressed explicitly.

Mr. ULRICH: The evidence was, as I remember it, that she was incompetent.

The COURT: I think he went stronger than that. I won't say that it was positive and explicit, but the inference apparently attempted to be made by Mr. Holt was that the purchaser's side, or rather at that time, the furnisher of money side, was well aware of the situation that he was dealing with. Wouldn't these letters be evidence irrespective of their source, as letters,—their original source,—in connection with the question of whether they emanated to the purchaser from Mr. Holt, and be admissible in evidence?

Mr. ULRICH: Anything having to do with dealings between Mr. Holt and Mr. Castle as between them, and any representation made by Mr. Holt to Mr. Castle, or any evidence bearing upon the question of representation or lack of representation which he claims to have made, might have its place. My objection goes to the admission of these as letters of Eliza Christian.

The COURT: I understand that your objection really is as to the use that may be made of them, rather than insisting that they are not

(Testimony of W. A. Greenwell.)

part of the entire record that can be considered so far as it is material or proved in the record.

Mr. ULRICH: My objection goes to the materiality of the evidence as admitted, on the grounds that it is not proved that these letters—that there might be a wrong inference drawn from them if they are permitted to remain in.

The COURT: Without drawing an inference and without ruling as to how far the letters can be used as evidence, the court feels that the identification is sufficient for the purpose at least of using the letters in connection with the transaction with Mr. Holt, and notice or knowledge of the Waialua Agricultural Co., at the original transaction, as to what they were dealing with. The court will overrule the objection in so far as it goes to that phase of it and allow the Exhibits to be marked in the record as the same numbers. 1-A, 1-B, 1-C and 1-D.

(EXHIBIT 1-A)

Oxford, England, December 7th, 1909.

Mr. James L. Holt,
Honolulu, T. H.

My dear James:

With regard to the proposition made to you in my behalf by Mr. Lawrence K. Kentwell in his letter of October 12, 1909, as to allowing me Fifty Dollars (\$50.00) per month, until such

(Testimony of W. A. Greenwell.)

time as you are able to dispose or buy my contingent interest in the Ahupuaas of Halemano and Wahiawa situate in the district of Waialua, Oahu, T. H. for the sum of Forty-Five Thousand Dollars (\$45,000.00) Ten Thousand Dollars of which to be paid to me in cash upon the execution of a warranty deed duly signed and delivered and the balance of \$35,000.00 bearing no interest upon the death of my father John Dominis Holt.

It is to be understood of course that the monthly allowance which you will advance to me from time to time shall be deducted from the sum of \$10,000.00 on the final consumation of the deal.

Trusting that you will do all you can in my behalf in getting this matter through satisfactory and kindly remember me to all the family at home, I remain with aloha,

Sincerely yours,

(sgd) ELIZA HOLT CHRISTIAN

(sgd) JOHN D. HOLT.

(EXHIBIT 1-B)

Dec. 7, 1909.

Dear Cousin Jimmie:

Papa and I received your nice letter and we are very glad to get it. Papa's eyes is getting better now and he is going to write to you too.

(Testimony of W. A. Greenwell.)

We received the dried fish and it was really nice and we all enjoyed it very much. I like Oxford very much and Papa like it too. Papa wants to buy a farm here and live in Oxford. Lawrence and Annie are very kind to me and give me everything I want. Papa takes his drinks at meal time now and goes out for a walk every day. He does not drink so much now as he used to in Honolulu. He is good now. I have signed the paper you asked me to and Lawrence is sending it back to you and when you sell Wai'ialua you can take back all you have given me. How is Lena and the children and how is uncle Jim. Give my best love to them all. I want to wish you all a very merry Christmas and Happy New Year.

I must close my letter now, I remain,

• Your loving Cousin,

(Sgd) ELIZA.

(EXHIBIT 1-C)

Jan. 29, 1910.

Dear Jimmie:

As Papa was writing to you by this mail I thought I would write you a few lines. We are having very nice weather just cold and nice and reminds me very much of San Jose. It snowed the other day just enough to cover the ground and everything looked so pretty. The trees and houses nice and white. Alice was caught in the

(Testimony of W. A. Greenwell.)

snow coming home from school. It just beautiful here then. Elizabeth to . I was so disappointed when I did not get the fifty dollars. Do you think you can arrange and send me the money for we need it. Do try and send me for I need it now and may not need it by and by. Pretty soon I will have to get me a suit for spring. I have a winter suit but will be too hot for spring. Will you try your best please and sent it by this return mail. Whatever you will give me I shall give it back when the deal is made, Papa says that he knows you will send it when we ask you. You are trying your best to sell Waialua. I hope you will succeed for we must have some money as we are so far away from home and everything lasts so. I won't be able to write a very long letter as the mail closes early. Give my to Lina and also the children and Uncle Jim and your dearself.

I remain,

Your loving Cousin,

(Sgd) ELIZA.

(EXHIBIT 1-D)

March 11, 1910.

Dear Jimmie:

Papa says he does not want Albert Christian to have a cent of our money and he wants to come back and get a divorce for me and we

(Testimony of W. A. Greenwell.)

want to stay with you when we come back and Papa says for you to have someone come up to S. F. to meet us as Lawrence can only take us as far as there because his vacation is very short and Papa wants you to send him \$750 if you can as soon as this letter reaches you so that we can start sooner. Papa says he feels very sorry to leave Annie and the children but he thinks it is for the best and wants you to get a divorce for me when we come back. With love from Papa and myself please remember me to Uncle Jim and Lena. I must close my letter.

I remain,

Your loving cousin,

(sgd) ELIZA.

WITNESS RESUMES: I went into Mr. W. R. Castle's office in 1899. Mr. Castle was in by himself, although Mr. Weaver was associated with him. I was the office boy, clerk, searcher of records, and things of that kind, in 1899. I was informed by Mr. Castle and the bookkeeper that various persons came to Mr. Castle with money for investment and he would invest the money for them. If the money was invested in the form of mortgages the mortgage was given by the mortgagor to Castle as trustee, which was the regular practice when I was in the office. We had an abstract in the office covering other interests in this Holt land and as the interests would be bought, the abstract would cover that interest. I

(Testimony of W. A. Greenwell.)

looked into this particular interest a few months before it was bought. The fee the firm received for the work in connection with the purchase of this interest was \$2500.

Cross Examination.

The fee of \$2500 that was received by the firm of Castle & Withington for the work done in connection with this purchase included such work as the investigation of title and the services of Mr. Withington in England. We did not receive any fee that I know of from Mr. James L. Holt, and so far as I know, that was the only fee paid to the firm. I know that Mr. Holt got back the letters, Exhibits 1-A to 1-D inclusive, because he told me so. He said that Castle had given him these letters. I remember that at that time—these particular letters.

(Respondent's Exhibits 15-A and 15-B were received in evidence, without objection, being two powers of attorney from Eliza Holt Christian to Henry Smith, of Honolulu. Exhibit 15-A is a power of attorney in general form, dated January 11, 1923, and signed "Eliza Holt Christian," and sealed. It was signed and sealed in the presence of J. Rose, a notary public, in Oxford, England, and was witnessed by Annie H. Kentwell in Oxford, England. The acknowledgment was taken by J. Rose, the notary, and bears the notarial seal.

Exhibit 15-B is a general power of attorney, Eliza Holt Christian to Henry Smith of Honolulu, dated

(Testimony of W. A. Greenwell.)

March 16, 1923. It was signed by Eliza Holt Christian in the presence of P. Bates, a notary's clerk in the County Hall, Oxford, England, and by H. W. Hansford, a notary's clerk also in the County Hall, Oxford, England. The notary's certificate is as follows:

I, JAMES ROSE of the City of Oxford in England, NOTARY PUBLIC duly authorized admitted and sworn DO HEREBY CERTIFY that Eliza Holt Christian the person named in the Power of Attorney, hereto annexed personally came and appeared before me this day and duly signed sealed and delivered the said Power of Attorney in my presence and in the presence of P. Bates and H. W. Hansford the attesting witnesses thereto.

IN TESTIMONY whereof I have hereunto subscribed my name and affixed my Seal of Office this Sixteenth day of March One thousand nine hundred and twenty-three.

(Signed) J. ROSE,

Notary Public.

Thereafter follows the certificate of Tom Basson, Mayor of Oxford, attesting to the fact that James Rose is a duly authorized, admitted and practicing notary public in the City of Oxford.

The foregoing Exhibits 15-A and 15-B, being original exhibits, are by order of the Supreme Court

(Testimony of W. A. Greenwell.)

of Hawaii, made a part of this record and are hereby referred to and incorporated herein.

Respondent's Exhibit 15-C was received in evidence over the objection of Petitioner, being the original Memorandum of Adoption dated June 12, 1918, between John D. Holt, of the first part, and Lawrence K. Kentwell and Annie K. Kentwell of the second part. Exhibit 15-C is a memorandum of adoption executed in London before Richard Westcott, Vice Consul of the United States, by which John Dominis Holt, designated as of Oxford, County of Oxford, in the United Kingdom of Great Britain and Ireland, purports to adopt the six minor children of Lawrence K. Kentwell and Annie Kentwell, of said Oxford, "as his own children, with all rights and privileges unto them belonging, as if they were the natural children of the said party of the first part, including the right to inherit as his heirs at law." The Kentwells agreed to the adoption in similar language. The document further provides for a release of parental control and rights over the minor children on the part of the Kentwells, the document ending with "TO HAVE AND TO HOLD hereupon and hereafter all the rights and privileges of adopted children; and said party of the first part hereby declares said children as his heirs at law." The instrument was signed at the United States Consulate in London by John D. Holt, Lawrence K. Kentwell and Annie H. Kentwell, in the presence of

(Deposition of Dr. James C. Masson.)

R. Westacott and M. Mellon, and acknowledged by Richard Westacott, Vice Consul of the United States.)

The

DEPOSITION OF DR. JAMES C. MASSON,

taken in Rochester, Minnesota, on behalf of Respondent, pursuant to open commission, was read into the record as follows:

Direct Examination.

I live in Rochester, Minnesota, and have lived there for a period of sixteen and a half years. I am a surgeon and a member of the Mayo Clinic. My particular branch of surgery is general surgery, specializing a little more in gynecology. I have been connected, or associated with Mayo Clinic for this period of sixteen and a half years. I attended Toronto University and Toronto University Medical School, graduating from that medical school in 1906. After that I spent a year in the Sick Childs Hospital in Toronto, three months in the Manhattan Maternity in New York, and as an interne in the Toronto General Hospital. Then I returned to the Manhattan Maternity as a resident physician of that institution. There were six internes in the Manhattan Maternity, and myself as the resident physician. I was such resident physician on January 1, 1909, and had been such resident physician since

(Deposition of Dr. James C. Masson.)

April of 1908. The Manhattan Maternity Hospital is located on East 60th Street, New York City. I had charge of the routine work of the hospital, assigning the internes to the various cases and acted practically in the capacity of medical superintendent. I differed from a medical superintendent in that such superintendent as a rule has nothing to do with the actual caring for of patients, whereas I was responsible for practically all the normal cases, and in the abnormal cases was in consultation before one of the attendants was called. There was also a lady superintendent, and the nurses were directly under her charge. I knew the duties of the nurses and assigned them to the cases. I continued as such resident physician until some time in April of 1909. I performed my duties daily and continually from January 1 up to and including January 23, 1909.

Since the case of Eliza Christian has been brought to my recollection, I remember her. She was the only case, to my knowledge, that had a precipitous labor on one of the elevated stations before being brought to the hospital. Furthermore, she was a foreigner, and was the only patient, for whom I cared, that was born in the Hawaiian Islands. The hospital had private wards and Eliza Christian was in a private room all of the time that she was in the hospital. There were no other patients in that room. I don't think I saw her until she was in bed, she having been brought to the hospital in an ambulance. I could not give the date from independent recollec-

(Deposition of Dr. James C. Masson.)

tion, but refreshing my recollection from the record, it was January 1, 1909. I am referring to a photographic copy of the record which was in my original handwriting in pen and ink. Referring again to the record, Eliza Christian continued under my observation to January 21, 1909. As a part of my duties I called on patients at least once a day. I made the rounds right after breakfast every day unless I was engaged on some operative work at the time. I sometimes called oftener than once a day. I called on Eliza Christian at least twenty-five times, the total number of calls being more apt to be thirty or thirty-five. This was part of my regular routine.

On my visits I talked to Eliza Christian and the subject of conversation was always in regard to her condition. I always got what I considered satisfactory answers to questions asked her, and looked upon her as a rather diffident foreigner who did not speak a great deal of English. I remember she spoke with the accent of a foreigner. She was a very obedient patient and gave no trouble to the hospital authorities, as I observed her. Nothing irrational in her demeanor was noticed by any of the hospital staff. I considered her quite normal. I never observed anything irrational in her demeanor, nor did she do anything in my presence which seemed to be irrational. I observed nothing abnormal in her demeanor, nor did she do anything in my presence which impressed me as abnormal.

(Deposition of Dr. James C. Masson.)

"Q. Please state whether or not she conducted herself in your presence and so acted as a person would who was normal mentally?

Mr. RICHARDS: Same objection.

A. I considered her so."

I observed nothing irrational in her speech or which impressed me as irrational. I observed nothing abnormal or which impressed me as abnormal in her speech. I observed her speech when I talked with her. She did not talk much, which I attributed to her foreign birth. I observed nothing irrational in her speech.

(At this point witness was shown a photographic copy of a birth certificate in the County of New York.)

WITNESS RESUMES: I recognize my handwriting. The original, of which this is a copy, was signed by me. The certificate shows the following: "Baby Christian; Female; Dark Brown; Jan. 1st, 1909; 3rd Ave. "L" Station 59th St.; Eliza Christian; Eliza Holt; 345 Ramway Ave., South Eliz. N. J.; Hawaiian Islands; 23.0; 1; James C. Masson; Jan. 10th, 1909." (Said paper being the copy of the birth certificate was marked Respondent's Exhibit 1, attached to and made a part of the deposition.) It was my duty to give a birth certificate to the Health Department of New York City of every child born under the care of the hospital.

(Deposition of Dr. James C. Masson.)

I have here in my possession certain hospital records, part of which relate to a child called "Baby Christian" and the other part to "Eliza Christian." In so far as the records pertaining to Eliza Christian are concerned, there are five sheets of them. Each of these sheets now herewith presented to me is a photographic copy of the original sheet. (Said papers or sheets were thereupon marked as Respondent's Exhibits 2, 3, 4, 5 and 6.) I recognize them as correct copies. The record throughout refers to Eliza Christian and to no one else. It is the record as was ordinarily kept as a part of the hospital routine by the Manhattan Maternity Hospital. It was my duty, and one of the nurses', to keep this record. I did not keep them all, but this particular record is all in my own handwriting. The information put into the record was obtained by examination and questioning of the patients. From my examination of the record I should say there were at least two nurses who had to do with the keeping of the nurses' chart. Their duties would appear on Sheets 4 and 5, which are marked here, for identification, Exhibits 5 and 6. It would be my duty to fill in the other sheets, namely, the sheets numbered as Exhibits 2, 3 and 4, and the records appearing on those sheets were made by me in my own handwriting.

It was likewise part of my duty to see that the hospital nurses performed their duty with respect to the keeping of this record. The keeping of such

(Deposition of Dr. James C. Masson.)

record was a matter of at least bi-daily routine. The patient's temperature was routinely taken, morning and night. It was my duty to see that the chart was kept recorded and that all records were put on the chart and medication was noted when given, and any special treatments were also noted by the nurses. I am speaking from my knowledge as to routine in hospital work. There is nothing to show that there was any other physician in attendance. This record, therefore, was kept as a part of the regular hospital routine and in the discharge of my duties and the duties of the nurses who may have attended the patient. The signatures appearing are my signatures.

Referring to the first three sheets marked for identification, Exhibits 2, 3 and 4, the only part that is not my handwriting is one entry on January 3, 1909. I myself had to put into the record her (Eliza's) condition on admission, the circumstances of her admission and the examination on discharge. From the fact that the case was an abnormal delivery—a precipitate delivery—I nevertheless remember that it was looked upon as a normal, spontaneous delivery. The patient was admitted in good condition and had a normal course all the time in the hospital.

It was my duty to put into the records the physical condition of the patient, both on admission and discharge, and during the period while the patient was in the hospital. If, for instance, the patient

(Deposition of Dr. James C. Masson.)

had a boil or a fever, or had been delirious, or had any physical ailment, that would have been brought to my attention. If there had been anything about her mental condition, that would have been noted and would have been brought to my attention. That would be considered under "complications" on my chart (Ex. 3), and under "Remarks" on the nurses' chart (Ex. 6).

If I had observed that the patient was abnormal mentally, it would have been my duty to note it. The same would be true if I had observed that the patient was mentally deficient, mentally incompetent, or feeble-minded. It likewise would have been the duty of any nurses in attendance to make such notations with respect to any observations of mental condition. If someone else had given me information as to condition I would probably have to check it up.

The record gives no indication anywhere that this young woman impressed me as mentally abnormal or as mentally deficient or as mentally incompetent or as feeble-minded. So far as my observations went, and speaking from recollection as refreshed by the hospital record, it is true that Eliza Christian was not mentally abnormal in any respect. On the same basis, she appeared to me to know what she was doing and what she was saying all the time. I considered the answers which she gave me to questions I put to her as intelligent answers and responsive to the question. It is exceptional that a

(Deposition of Dr. James C. Masson.)

child should be born while the mother is on the way to the hospital. It does, however, happen occasionally, and I would say that probably six or eight so happened during the year I was in the Manhattan Maternity Hospital. I can remember, for instance, that one full term and one miscarriage happened in an ambulance, and two others happened in the doors of saloons not far from the hospital.

Cross Examination.

The greater part of my training and experience has been in surgery and gynecology. I have specialized in those fields with the exception of a period of about three years when I was in private practice. After Eliza Christian's admission to the hospital I had to make daily rounds—at least once a day—having to do with anything in regard to the general health of patients, particularly in matters concerning childbirth and the after effects of childbirth. Other than the records which have been placed before me, I remember that the birth of Eliza Christian's baby was a precipitous one and I was first in attendance after her delivery. At this time I have no recollection of any particular sentence Eliza Christian may have used in talking with me, or any particular recollection of statements or conversations. It is, in all probability, true that any conversations with her would be with reference to her physical condition following childbirth. I never made any examinations as to the degree of her

(Deposition of Dr. James C. Masson.)

mentality or used any of the tests recognized by alienists. I did not make any observations as to whether she could add two and two, subtract, read, write, memorize, appreciate the value of money or property, or observations as to her standards of morality.

Referring to the birth certificate, the question mark would indicate there was some doubt as to who the father was. It would not necessarily indicate any such doubt in the patient's mind—simply that it was not her husband—a matter which we never go into. I do not remember whether a man named Lawrence Kentwell accompanied her. I might have obtained some information from him if he did come. In the normal course of inquiry I would have asked her if she had a previous child, and the record would indicate that she did not tell me so. Eliza Christian was of a dark race but not a negro, having the complexion that I ordinarily look upon as found in Hawaiians,—a light brown color. I don't remember the color of the baby, for the babies of both dark and light mothers are often the same color at birth.

Feeble-mindedness would mean that there is just lack of development, and the state of feeble-mindedness might be anywhere from a child starting to develop up to maturity, whereas insanity would really mean an abnormal state. I made no special tests in regard to her mentality. Eliza Christian was not talkative. She did not volunteer statements

(Deposition of Dr. James C. Masson.)

and what she said was practically always answers. In a majority of the questions the only answer called for was either yes or no. Her talk was broken. Eliza Christian was small and appeared to be in the early twenties. I take it for granted that the child left the hospital with the mother, for the discharge for the baby and the mother are made on the same day. I have no independent recollection of that fact but apparently the child was in good condition on discharge from the hospital.

In January of 1909 there were probably between twenty and thirty patients in the hospital whom I had to see each day. I have had no occasion to recall this case till about a month ago when Mr. Castle wired or telephoned to me. I then recalled the fact of the precipitous labor and it was reported in the hospital that the patient was wealthy. It is true that to a large extent my opinions as to mentality are based upon negative factors. I particularly remember, however, that she caused no trouble or inconvenience to any of the hospital staff during her stay in the hospital, which would likewise be a negative factor. As regards cleanliness, I do remember that on Eliza Christian's admission there was nothing noticeable in that regard.

My opinion about Eliza Christian's mental condition during the time she was under my care, is based on my memory of her, refreshed by an examination of the chart. I am not familiar with the medical distinction between the words "idiot."

(Deposition of Dr. James C. Masson.)

"imbecile" and "moron." My opinion is that a feeble-minded person is one who does not have the intellect of a person of his or her year normally. I do not claim to be an expert or particularly trained or experienced in mental diseases. I have not observed to any extent persons of the same race as this patient but I did spend four days at a fishery in Alaska waiting for a boat, and most of those there waiting for the boat were Hawaiians. I made no inquiry in regard to the schooling which Eliza Christian had. If it should appear, after seven years of average school training, that she was unable to read the simplest of words, to add two and two, to memorize simple sentences of six or eight words, it would, in my opinion, indicate that she was subnormal mentally. Likewise, if she was unable to point out distinctions between woods and metals, or between fruits and vegetables, or between different types and kinds of animals, it would indicate a subnormal mentality, if she understood at the time what was meant.

Re-direct Examination.

If, as a result of my observations of Eliza Christian, she seemed to me to be possessed of the mentality of a child of five or six or seven years, I would have made a notation of the fact on the hospital record.

Re-cross Examination.

I talked with Mr. Castle for perhaps a half hour and he went over the facts in connection with my

(Deposition of Dr. James C. Masson.)

experience with Eliza Christian. He did not explain to me what any of the other testimony in this case was or should be.

Further Re-direct Examination.

At the time of the conversation with Mr. Castle it was stated I would be asked primarily about my recollection of Eliza Christian, based on my observations of her.

Further Re-cross Examination.

"Q. Do you remember any particular or specific questions which you ever put to this patient, or any particular instance during your observation of her, which called for any mentality on her part beyond that of a child of any particular number of years of age? The question calls for any particular incident, happening or event.

A. No."

(Following the admission of the foregoing deposition in evidence, Respondent also offered in evidence the hospital sheets and records hereinabove referred to, which were marked Exhibits 2, 3, 4, 5 and 6 for identification, but the Court refused to admit the same in evidence, in words as follows:

"The COURT: Before we begin this morning, I will say in regard to the Masson deposition that the court has read it with the excep-

(Deposition of Dr. James C. Masson.)

tion of the hospital record, and in that connection—the hospital record I think is offered on page 22 of the deposition,—my general opinion on that offer is that it does not come within the exception of the statute as to the admissibility of evidence. Secondly, that the hospital record or any doctor's record of the treatment, would not of itself be original evidence, but could only be used in so far as to refresh the doctor's recollection. He used this record in his original testimony to refresh his recollection in so far as it gave him an opportunity to verify or correct, or check his observations as to the mental condition. But as a hospital record, as such it should not be open for general inspection. In that connection, under the general objections, as well as under the court's idea of the use of records of that sort, the court will refuse to admit the hospital record as part of the deposition, and will instruct the clerk forthwith to separate the sheets referring to that hospital record and seal them in an envelope, properly identified as a record accompanying the Masson deposition, excluded from evidence by the court and not allowed in the general reading of those records. But they may be attached to the deposition and will be received as part of the deposition."

The

DEPOSITION OF

DR. JAMES T. WAYSON,

taken on behalf of Petitioner in Honolulu, pursuant to open commission, was read into the record as follows:

Direct Examination.

My name is Dr. James T. Wayson. I came to Honolulu in November, 1894. I practiced medicine shortly after that, probably in 1895, and have practiced medicine continuously here since then. I have had experience in the matter of persons mentally defective. During the early years whenever Dr. Herbert, superintendent of the insane asylum, took his vacations, I occasionally took his place. Then only occasionally in 1923 I had charge of the insane asylum during the time immediately after Dr. Schwallie left. In a general way I had cases that came up occasionally. I have had the average experience of the average physician.

I know Eliza Holt. I cared for her in a professional capacity for a number of years. I was the regular family physician more or less for the John D. Holt family and many other Holts. Whenever Eliza required a physician I was her doctor. My professional services were rendered as family physician to the Holt family, and more particularly for Eliza Holt, from back in 1895 for ten or fifteen years until she went away, and I saw her on and off until she left Hawaii.

(Deposition of Dr. James T. Wayson.)

From my personal observation of her, matters that came to my personal attention, the fact is, I know she was feeble-minded all the time I was acquainted with her. This condition of feeble-mindedness was called to my attention in the following way: her physical characteristics showed she was of low mentality, and sometimes when she came down to my office Mrs. Kentwell would telephone to see whether she had arrived there. Sometimes after coming to my office she would play around in the yard and I would have to send her home because she didn't have sense enough to go there. She would come to the office sometimes with her father and sometimes alone. I never undertook to see whether she understood an oral conversation, but left most of the supervision of what I had to do with those who had the care of her. In the matter of conducting a conversation with her, in treatments and things of that sort, I naturally depended on those who had charge of her to carry out the instructions.

"Q. Was it necessary for them to carry out your instructions?

A. Entirely so, yes. That is, a part of it."

(Over the respective objections of Respondent on the ground of the nonqualification of the witness the Court permitted witness to testify as set forth in the following paragraph.)

(Deposition of Dr. James T. Wayson.)

Throughout the time I knew Eliza extending from the time she was a child up to later years of maturity, I always considered her as a feeble-minded person. This is true as to the latter part as well as the earlier. From my observation of Eliza's mental condition I am of the opinion she inherited it, and it was, to the best of my knowledge and belief, a permanent condition. As of the time she left here, a woman of nineteen or twenty, I would say that from my knowledge of the condition of her mind she was incapable of fully realizing the meaning and significance of a legal document such as a deed or conveyance. Even if the document were read and an effort were made to explain it to her, from my observation of her I don't think she had enough mentality to appreciate it more than the time being.

I never had occasion to study mental diseases especially. I am one of the oldtimers and we didn't specialize then like they do nowadays. We had a course in mind diseases as part of our education, my medical school being the University of California. I have never considered myself an expert although I have given my opinion on the stand in matters involving mental conditions several times and the testimony has been received by the court. When I get to be an expert I'll reach the stage of being dry rot.

(In response to questions put by the court Dr. Wayson testified as follows:)

(Deposition of Dr. James T. Wayson.)

The matter of study of mental diseases, hereditary matters, is a big subject to give in a few minutes. If you want to get at the matter of heredity, I'll give you a case right here in this case: John D. Holt, the father of Eliza Holt, was an alcoholic-deteriorate in that stage. I had occasion to commit him for alcoholism and she showed a low mentality. That would be a specific indication in this case.

It is pretty hard for me to go back over the thirty odd years I have been practicing, although I have been in the Jones murder case and things of that sort, and my experience here of taking the history of cases entering the insane asylum. I was never what you gentlemen classify as an expert. I have never gone into any elaborate method of studying congenital cases, although I have studied works on what is transmitted from father to child, but not especially. In the cases that I had, I took the family history.

(Resuming his testimony on direct, Dr. Wayson said:)

I testified as a witness in the Hall trial where Eliza was a complaining witness in a rape case, and as a matter of justice warned the Grand Jury to take her testimony carefully as she had said she was ten months pregnant when from her physical condition this was impossible. My memory is hazy and I don't remember whether I confined her with her first child but know that I was to do so. The

(Deposition of Dr. James T. Wayson.)

only questions I asked her at that time were the necessary questions having to do with her physical condition. I had no occasion to treat her specially for feeble-mindedness.

Cross Examination.

Honolulu was a small community in 1894 or 1895; Eliza made no such particular impression on me that I could tell you really when I became her physician. It is hard for me to say when I first knew. It is like taking care of the Smith family. There were so many Smiths and Holts I can't go that far in my memory. My office was at 445 South Beretania Street. I don't remember telling the Grand Jury that I never made any examination of Eliza as regards her feeble-mindedness. I know of no necessity of making an examination of that sort. She was a half-wit and you could see it. In the Hall trial I don't remember the particular statement made but, leaving the question of insanity out there are several degrees of mental defectives, namely: imbecile, idiot, and latterly another, moron. That is all a matter of individual opinion. If you want to you can get a half a dozen books on mental diseases, and if you want to go nutty, read them. As far as the study of the mind today is concerned, it is just as much in its infancy as it was thirty years ago. Each fellow wants to get up a new grade or classification. It is utterly impossible for anybody to keep that in mind, I don't care who he is. While I don't re-

(Deposition of Dr. James T. Wayson.)

member telling the Grand Jury that Eliza was half-way between, I'll say that right now. She had the appearance of being below par mentally. I don't go in for this mental expert stuff—it is discreditable to the medical profession. Either side can buy the mental experts over. I have been in the business and know the men. All I know is that I have been called to tell what I know of Eliza Holt. That is all I know. A lot of these tests are tommyrot, and I don't know anything about these recent tests now used by experts.

Re-direct Examination.

With respect to the degrees of mental defectives, the lowest is idiocy, next imbecile, next a moron. An idiot is a person with no understanding at all; insanity is a disease of the brain affecting the mind. Take the case of feeble-mindedness,—you can take a person who is feeble-minded and train him to do things that would bring up his mentality to a certain extent. Take a feeble-minded person today and train him and he would be able to earn a living for himself, depending upon the degree of feeble-mindedness, but the low mentality still remains.

Re-cross Examination.

I very likely told the grand jury that Eliza was not insane, because she was not, nor was she an idiot.

Re-redirect Examination.

(Over the objection of the Respondent on the ground of the nonqualification of the witness, and

(Deposition of Dr. James T. Wayson.)

the fact the witness stated he was not an expert, the Court permitted the witness to testify as follows:)

Upon the basis of the classification of an idiot as one having no mentality to one having a mental age of two years, an imbecile being one having a mental age from two to seven years, and a moron having a mental age from seven to fourteen years, I would classify her as an imbecile rather than a moron, nor do I class her as an idiot, nor insane. I know of no physical injury she might have received to her head.

MEKIA KEALAKAI

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I am the bandmaster for the Hawaiian Band. I held that position for about six years, then another two years with the band at the Boys' Industrial School, and this year I am back in my position as bandmaster of the Royal Hawaiian Band.

I visited Oxford, England, with my wife in 1919, and visited the Kentwells in Oxford. I lived in the Kentwell home for about two weeks and met in the home a girl by the name of Eliza Holt. I talked with her and she talked to me. She appeared to me to be the servant of the family, for she did the cooking, washing, cleaning and everything. We

(Deposition of Dr. James T. Wayson.)

all ate together. The children would assist Eliza, and Mrs. Kentwell would also wait on the table. Every morning Eliza cooked the breakfast, washed the dishes and after that cleaned the house, because Mrs. Kentwell didn't generally allow her to stay with us. She would say, "Eliza go to your room; go and do your duties." At lunch and dinner Eliza would also cook the meals and wash the dishes. In my opinion Eliza was a normal girl.

Cross Examination.

I went to England in 1919 on the Lapland from New York to Liverpool. We arrived during either May or June. In Liverpool we took the train for London and were there until October or November. I played at the Savoy Hotel. We lived in London at a rooming house on Kingston Road. My wife and I went down to Oxford on an invitation from Mrs. Kentwell, either in October or November before I left London for Paris. We roomed in the Kentwell house upstairs. Old man Holt slept in one small room and we slept in a room across the way. I think there were four or five girls there then. Eliza was living there at the time. I can't tell you which her room was. Sometimes Mrs. Kentwell helped with the cooking. I know that Eliza did the cooking because I went out in the kitchen. There was no other maid around. When Eliza would set the table then we would all sit down and eat together. After that both Eliza

(Deposition of Dr. James T. Wayson.)

and the children washed the dishes. I remember a girl by the name of Alice but don't remember the names of the others. John D. Holt was up in his room and in the parlor. There was nothing the matter with him physically nor with Eliza. I did not see Eliza with any baby belonging to her. I think the kind of stove Eliza used was either gas or oil. I do not think she did any gardening. Mrs. Kentwell didn't allow her to talk to us. Eliza seemed afraid of Mrs. Kentwell. Eliza did not talk at the table. Mr. Kentwell was not there; he was in China. Eliza was neat and clean about the house. I have seen her cleaning the various rooms. I mostly stayed in the house with the old man (John D. Holt); we sat in the parlor and talked old times. Eliza seemed a young woman and there was nothing particularly wrong in her appearance in any way except her eyes were a little bit crossed. I think she was born that way. She was short and slim.

MRS. MILLIE KEALAKAI

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

• I am the wife of Major Kealakai, the bandmaster, who has just left the witness stand. I went with him on his tour of Europe in which we visited London and Paris. We visited the Kentwells at

(Testimony of Mrs. Millie Kealakai.)

Oxford for about two weeks. This was in 1919, November, as I think. I knew Eliza Holt while I was there and talked with her. She did house-cleaning, cooking and setting the table. Sometimes the girls would help. There was no other outside person doing cooking. The girls also helped with the table. Eliza ate with us. After the meal was over Eliza cleared the table and I helped her sometimes in that work, as did Mrs. Kentwell and the girls. The girls also helped Eliza in general house work. From my observations of her and her acts, and the conversations had with her, she was normal.

Cross Examination.

I was participating with my husband in his musical engagement in London. We went to Oxford on Mrs. Kentwell's invitation and stayed with them there in their home for two weeks. I don't remember how old the Kentwell girls were, but Alice was a big girl. I don't remember the names of the others. Eliza was not an unusually good cook, but just a good cook. I have been in the kitchen with my husband when we sat and watched Eliza cooking. I only remember talking to Eliza about how she was, or that sort of thing. There was no maid working in the house at the time.

MRS. KEKUMANO

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Honolulu and have lived here pretty near all my life. I was born in 1872 and went to the Convent from the time I was five until I was twenty-four. I think that Eliza Holt was there for about two or three years while I was. I used to take care of her with the other small children. I used to watch the children and she was one of them that I took care of while the Sisters were away. She played in a normal manner as other children play. I talked with her while I was in school and she talked and acted in a very normal manner. After she left school once in a while I would come across her with her father and I would say hello to her and she would reply.

Cross Examination.

I think Eliza must have been about nine years old when I first saw her at the Convent. While I was there she was a boarder. This was the time I knew her. While I was supervising the children I would look at her work as I did with the others. I do not know whether she was changed from one grade to another while I was there but I knew she was studying. She was with the small children. She could read a little bit.

Re-direct Examination.

Eliza did sewing with the rest of the children, doing little handkerchiefs and small pieces of work.

JAMES D. DOLE

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I first came to Hawaii in November, 1899, and moved out to Wahiawa the 1st of July, 1900, beginning raising pineapples during 1901. I did the actual planting and growing of them myself. We started canning in 1903, the summer of 1903 being the first pack. I have been in that business ever since and am now president of the Hawaiian Pineapple Company. I can state in a general way the condition of the pineapple industry around May, 1910. The condition in 1910 was very depressed, following the secondary reaction from a very severe depression in the summer of 1908, which lasted until the spring of 1909. In the spring and summer of 1909, business was greatly improved, due to the advertising which had been carried on by the association, but, either due to letting up on that in succeeding months or some other reason, the business became depressed in 1910; still more so with the profits in 1910, which were generally very low, and that condition of depression existed during practically all of the year 1910.

We began experimenting with fertilizers very early,—in 1906 or 1907—but for some years we were not sure that they did any good and they were not used to any great extent for a good many years after that. It is only in the last five or six, or perhaps eight, years that large quantities of fer-

(Testimony of James D. Dole.)

tilizers have been used. The question of fertilizers in 1910 was in a very much experimental state.

The caterpillar tractors came into use about 1912 or 1913. We imported the second caterpillar tractor that came to the Islands. That was in use at Koloa and it was not very successful because they were not well made in the beginning. They were not successful by the year 1910. The caterpillar tractor became one of the major factors in permitting the pineapple industry to be carried on on a large scale. Motor trucks were used only to a slight extent, if at all, in 1910. I don't think we had any as early as 1910.

The iron sulphate spray came into use during the early months of the year 1916. It has proved its usefulness for spraying, on almost all pineapple areas to some extent, but the principal thing it has done is to make available for pineapple growing very large areas of soil where pineapples couldn't grow before. The successful commercialization of this spray, beginning in the spring of 1916 made possible the utilization of a large area of lands. The type of lands on this island where the spray is used is principally the shallow, black soils some little distance from the Koolau mountains and some little distance from the Koolau plain. Probably it is the richest soil for pineapple growing, but it was practically worthless for pineapple growing until the ability to supply iron directly to the plants by means of this sulphate spray was developed. (Witness then referred to the map, Exhibit C.) The lands below the red lines, below the lands under lease, were no good for pineapple purposes in May, 1910.

(Testimony of James D. Dole.)

It is the iron sulphate spray which has made these lower lands available for pineapple cultivation. It is also a fact that even without the sulphate spray it is a question whether these lower lands would be useful as they are today if it had not been for the paper mulch which was tried out in the early months of 1920 and put in general use in 1921 and 1922.

I should say that the pineapple industry became a firm and assured industry after emerging from the post-war depression in the middle of 1921. At that time the industry had shown its ability to withstand a depression and, with the control of new diseases, the industry was on a firm basis. Even in 1910, in obtaining money from the banks, our company could not get a credit without an underwriting agreement, and that agreement was underwritten by large stockholders and myself.

In a general way the lands from Paaluhī Gulch over to Helemanō Gulch was as far as people thought they could raise pineapples. They were all taken in, including considerable area at the upper end, which is a very shallow soil and which has proved very expensive to raise pineapples on. (Witness then referred to a particular field on the map which was largely a failure.)

The lands shown on the map were not all leased by ourselves but the parts indicated by me indicate in a general way the lands which at that time, in 1910, were considered land that would grow pineapples. As far as elevation is concerned, I am referring to the land above, where the letter "R" is

(Testimony of James D. Dole.)

written. Even in those lands there were spots where there was excess manganese but pineapples could be produced.

The Ii Estate lands in Waipio I know, particularly the upper part. The Hawaiian Pineapple Company had leases on certain areas. These Ii Estate lands were, for the most part, more accessible to the railroad, more accessible to the main road; there was less brush and trees; the land appeared to be less crude and there was less of this shallow upper land. The Ii Estate lands were probably at that time more attractive to lease. They were likewise not as much broken by gulches.

In May 1910 the fair market value of the land in general under pineapple lease would be \$75 to \$100 an acre, which might be taken for the entire tract as a whole.

Cross-Examination:

The depression in 1910 in the pineapple industry was primarily a case of marketing conditions. It is impossible to separate the marketing view from that of cultivation because the two are bound together. If a man is raising pineapples that he is selling for less than they cost him he naturally feels gloomy about it, whether he is raising good pineapples or not. The agricultural end of it was not in a particularly good condition. We were having great difficulty in making pineapples grow the second time we planted them. We were taking in some additional lands, so were having, I believe, some increased areas, but we were not increasing our plant-

(Testimony of James D. Dole.)

ings at that time. I do not say, from the standpoint of production of crops, it was any worse in May 1910 than a year or two before, but due to the tremendous difficulties of marketing during the previous years the heart had been taken out of the canners and they were having trouble in marketing the goods. This reacted on the growers and took the heart out of the growers, so while in 1910 the canners were getting their courage back to can more heavily the growers were not in very good shape.

The volume of production in the pineapple industry increased very rapidly up to and including 1908. As a result of that rapid increase, this depression was brought about which took some years to thoroughly work out. There was a decrease in 1910.

The great difficulty occurred among us in the year 1907. Our pack at that time had practically more than trebled. It did that, however, in a very active canned goods market. Business conditions up to the time of October or November of 1907 were extremely active, so this pack was entirely contracted for and sold to the trade, but it wasn't put into consumption. The result was that when we followed that up with a pack in 1908 that was double the pack in 1907, we found ourselves with an enormous stock on hand. As a matter of fact, on February 1, 1909, we carried over the equivalent of 70% of our previous year's entire pack. In the early part of 1909 prices were dropped. Extensive advertising began to pull us up in March 1909 and conditions looked better by the time of the summer pack of 1909, but there was a slowing up after that

(Testimony of James D. Dole.)

and generally a very depressed condition or failing in the industry, although we had the acreage to increase our planting in 1909 and again in 1910. We were taking a chance on conditions; growing the pineapple and selling the canned product was our real business. Fresh fruit was inconsequential. The market was set in a very accurate way by the law of supply and demand and we tried to guess in the early part of the year what prices would be warranted by the existing supply and demand. At the beginning of 1910 the market was rather dull. At the end of 1909 we had quite a heavy carry-over but not as distressing as the year before.

The piece of land which I pointed out, on my direct examination, as suffering from a manganese condition was our own lease, marked "Lease 100." About 1500 acres of this lease were ours. The manganese condition was not taken care of until the use of the iron sulphate spray in 1916. Prior to 1916 we would not have taken any such additional land. In 1912 we leased some 746.21 acres about in the location as marked on the map. That land did not have as much manganese condition as the lower land.

I know of no other areas which at that time were susceptible for development of pineapples in the Holt lands without the sulphate spray. I have been all over these lands on foot and on horseback. We used to go over them almost acre by acre in those days because wherever we found these areas of soil with manganese—at that time we didn't know what

(Testimony of James D. Dole.)

it was—we left it alone. Part of the land under lease to others was of this character.

My testimony of a value of \$75 to \$100 per acre applied to the land that we leased. In regard to other leases, some of the areas were pretty well selected and in some other leases the people made a mistake by taking them. My basis of value is reached by figuring what we ourselves would have been willing to pay for land at that time if we had the money, and also by figuring the rental, and not a straight capitalized basis,—rather, on how much we would have to pay to buy the land than to pay rent on it, say for ten years. At that time, with the doubt in regard to the lands, we figured we would rather pay rent on a short term than take up a long term lease. I don't know of any pineapple lands that were being sold at that time unless it was some of the Pupukea land. I doubt if we would have offered that much for land but if it had been put up to us and we could have brought a particular area we had under lease at \$75 an acre, I think probably we would have gone out and tried to raise the money to buy it. At over \$100 an acre I don't think we would have tried to do business at all. It is impossible for anybody absolutely to determine a value. At that time we had \$499 in the bank. Most of the lessees at that time were not responsible people but we turned out to be. A capitalization of rental which would be considered fair and conservative today would not have been at that time. If you are going to figure anything on rental basis

(Testimony of James D. Dole.)

I would guess that it would be about ten times the annual rental. Our average rental was about \$8.00 an acre per annum.

(In response to a question by the court, witness stated:)

"A. Judge, there were no buyers and there were no sellers of pineapple lands. It is a conjecture of what we would have paid. As I said, at that time there was so much uncertainty in regard to the continued production of pineapples on these areas we didn't know whether we were going to make it a permanent agricultural crop or not. There are very few crops which are raised year in and year out on the same land.

The COURT: So I understand your problem was in getting some land and trying some crops on it, and moving on to new areas, or rather developing the same areas?

A. It looked for a while that we might have to move on to new areas, which would mean that the whole business would be very short lived, but we were working all the while to produce a condition where we would have a permanent agricultural production, which we have reached now and hadn't reached until 1921."

Redirect Examination.

There was a very serious depression in 1914 and 1915 in regard to the pineapple business. My testimony as to value is based not only on the knowledge of the land but my knowledge of other pineapple leases in existence.

MRS. WILHELMINA PIERCE,

recalled as a witness for Respondent, testified as follows:

Direct Examination.

On cross-examination I told counsel for Petitioner that I knew one of the Martin girls when I was in school, but that Miss Martin is not Mrs. Fisher sitting there who was a witness for respondent. I was referring to the Martins up in Kona.

Cross-Examination.

The Miss Martin that I referred to when you examined me before is not the lady who is now Mrs. Fisher. I do remember Mrs. Fisher. She was in my class. On my Direct I testified Eliza Holt was not in my class, but I don't remember if she was or not. Mrs. Fisher sitting here, then Miss Martin, was in my class.

Redirect Examination.

I don't know whether Eliza Holt was in my class or not, but I do remember that Miss Martin, who is now Mrs. Fisher, was in my class.

JOSEPH P. MEDEIROS

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I have lived in Honolulu all my life. I knew a girl by the name of Eliza Holt in the years 1902 and 1903. I was then a clerk for the Hawaii Realty

(Testimony of Joseph P. Medeiros.)

and Maturity Company under the management of Lawrence Kentwell. I saw Eliza Holt in company with Mrs. Kentwell at our office. I saw her several times; once for a period of practically two weeks at one stretch. She was brought in the office by Annie Kentwell and kept there away from her husband. I was instructed to see that Albert Christian would not take her away while Annie Kentwell would do some shopping around town. During those two weeks I had occasion to talk to her and she to me. The husband came around to or three times but didn't come in, knowing that I was there. She was kept away from her husband. Eliza Christian would pick up a magazine or the morning paper or the afternoon paper and read them. I have seen her do that.

Based on my conversations with her and on my observation of her, she was normal.

Cross-Examination.

I am president and manager of the Ideal Finance and Mortgage Company, having held that position since 1926. I was associated with Mr. Kentwell from the year 1901 to 1903. The Kentwells would ordinarily bring in Mrs. Christian around 9 or 10 o'clock in the morning, this was day after day, for a period of practically two weeks. She was left there with her cousin Annie Kentwell, and it was when Annie Kentwell went out that I was instructed to take charge. I would say from my recollection that Mr. Christian came around two or three times. I don't remember particularly what conversation I had

(Testimony of Joseph P. Medeiros.)

with Mrs. Christian. In regard to her reading, I recollect on one occasion she commented I suppose on what she was reading in the paper. It was some matter of news and we discussed the thing together. That is the only thing I do remember because she called my attention to that article and I glanced over it. Some trial was coming up about that time and an annulment of marriage. This was in 1903, as I remember, as I think I left Kentwell either in the month of November or October. I think that was around about September or October. The matter of reading a newspaper was a daily affair. I think if I remember correctly, the article was something pertaining to her case. I did not probe into the matter as I was a young fellow and sort of bashful myself. The trial was not going on then but I think the papers were filed—something to that effect. She wore glasses and was a little bit cross-eyed. Kentwell was in the office, too—both Kentwell and myself, in and out. George Kentwell used to come in, as well as a Mr. Decker and Mr. P. H. Burnette. After I left Mr. Kentwell I went to the California Feed Company as a collector and salesman.

CHARLES H. MERRIAM

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I entered the office of the Hawaiian Registry of Conveyances in August of 1900. I was Registrar of

(Testimony of Charles H. Merriam.)

Conveyances from August 1904 until I retired to take my present position as manager of the land department of C. Brewer & Company on August 15, 1918, in connection with sugar plantations. As Registrar I had of course the intimate handling of all transactions that came through the office, as the installation of the new system was then under way and all documents passed under my scrutiny. Further than that, I had an interest in the transactions passing through the office because I wanted to learn the localities of the different properties and was anxious to learn as much as I could about values and owners and otherwise.

My first experiences in going over lands on this island were in connection with pheasant shooting trips taken to Wahiawa, Waipio, Leilehua, Helemano (otherwise better known, or accurately known, as the lands of Paalaa), and also further to Kawai-
loa. These trips of mine were taken from 1900 until about 1915, the later few years rather more infrequently, but quite often in the earlier years. I knew the lands of Paalaa and Helemano quite well as of the time specified. I tramped over very large portions of such lands. Helemano was pretty heavily overgrown with guava and lantana in the early days. Sometimes we would cross Helemano gulch but not very often because it was pretty rough on the other side and it was a deep gulch to cross.

I knew Mr. Charles A. Brown, manager of the Ii Estate, who had charge of the Waipio lands on which we used to shoot and tramp over. The Waipio

(Testimony of Charles H. Merriam.)

lands were more open and less covered with guava and lantana. Mr. Brown was a good business man. I am familiar with the pineapple leases on the Ii Estate lands, referring generally to May of 1910, and also with the pineapple leases on the Helemano (Holt) lands. I am likewise familiar with leases for sugar cane purposes on both sides of the Holt lands. In my position with C. Brewer & Company I have a good deal to do with purchasing and leasing of cane lands.

Cross-Examination.

I have watched the development of these lands from the time I first saw them. I am familiar with cane land values and pineapple land values. My transactions with Brewer & Company have dated since 1918. Brewer & Company have no pineapple agencies but we have various lands on various plantations that are leased for pineapple purposes.

Continuing with Direct Examination.

I saw the actual development in the early days on these (Holt) lands themselves. Some land would be regarded as waste land—that is, the gulch lands and the rough, rocky lands which could not be cultivated. I regard land on its own merits; that is, it is a portion of a block of land which cannot (referring to sugar cane land), from its own waters, be irrigated—that the rainfall is not sufficient to produce a crop of cane in that elevation. I would consider such lands (Holt sugar cane lands) to have a market value quite similar to the adjoining lands, and would say that in 1910 it would be between \$50

(Testimony of Charles H. Merriam.)

and \$75 an acre for its value—possibly an average of \$60 an acre. Regarding the pineapple lands, I would say that the average value of that land would be regulated largely by the market value as represented by the many leases of other lands adjoining this land and any lands at Waipio. I would place this value at \$75 an acre.

Further Cross-Examination.

There are different classes of sugar cane land. If a land has water appurtenant to it sufficient to irrigate, then sugar land or sugar cane lands are worth more than pineapple lands. If sugar land has only water available from outside sources, then sugar lands are worth less than pineapple lands. If the owner of the sugar cane land has no water, then the land is worth much less than pineapple land.

The experiments on the Holt land showed that one could not get a good crop of cane at a high level. The value of cane land to an owner would also depend largely on how much available water he had and what this water would cost. Assuming there is no difficulty, so far as the water situation is concerned, and that there is ample water, cane lands producing $6\frac{1}{4}$ tons per acre for the crop would be worth \$125 to \$150 per acre. My basis of \$75 an acre for pineapple land is from leases given to pineapple companies, Japanese and independent planters by land owners, running from December, 1905 for a period of twenty years.

I have here a pineapple lease of 513 acres from the Fi Estate to J. D. Dole, from December 1, 1905.

(Testimony of Charles H. Merriam.)

which has a low rate for the first three years but thereafter for the remaining seventeen years is at the rate of \$7.30 per acre per annum. I have another lease by the Ii Estate to the Honolulu Packing Company, commencing December 1, 1907, for 804.02 acres of land at \$7.50 per acre per annum for the last fifteen years of the lease; another one to certain Japanese, commencing November 1, 1907, for approximately 93 acres at the rate of \$7.30 per acre per annum; two others, one in 1908 and one in 1907, run at the rate of \$10 per acre per annum. These leases I have referred to were some of the large lands; there are many smaller leases that are hardly applicable here. There is also another large lease, namely, to the Hawaiian Pineapple Company on the basis of \$8.00 per acre on the Holt lands. I do not think that small areas—5 or 10 acres, for instance—are a fair criterion to go by for a large area of land. A lease, however, of some 1500 acres at \$8.00 an acre would, in my estimation, be a fair average value for the Holt lands. Ten times the average rental is all we feel those lands are worth in the market. The Ii Estate lands, for instance—on which I referred you to specific leases—were leased to responsible parties. At the time of the lease they were better lands than the Holt and less costly to bring into cultivation. I am regarding land from the standpoint of value as land, the then existing condition of what the land earns, as the basis—I think the only basis that could be used. I am not acquainted with the cost of production or the pro-

(Testimony of Charles H. Merriam.)

ductivity of pineapple lands other than in part. I have understood from land owners what they considered to be a fair rental, in addition to the record evidence; that is to say, I have talked to certain land owners especially Mr. Brown, the manager of the Ii Estate, who was leasing lands to pineapple men for many years. I recognize the fact that leaseholds have a value in the hands of the holder. It all depends on circumstances. It is considered that the fee of the land under a long term lease, is less if the lease has more than its half to run, than when it is more than half run. If the use to which the land was put was such as to actually give that leasehold a premium value, such leasehold probably would have a premium value, but in endeavoring at that time to reach an estimate of the value of the land I do not think this leasehold premium value should be considered because it must run its term of years to bring back possession to the owner. In reaching my figure of \$75 I considered nothing but this proposition of rentals on long leases. The Ii Estate lands (Waipio) are probably somewhat more valuable than the Holt because of the fact there is more transportation. The lands are better, to begin with, by virtue of very little growth on them. The Holt lands are further up, requiring greater cost of transportation for the product and were rougher in character and growth. From a general knowledge such as I have had of the two lands, the Holt lands are less valuable than the Waipio.

(Testimony of Charles H. Merriam.)

Redirect Examination.

Referring to availability of water, I mean the ownership of the water by the person owning the land. If a piece of land will not produce a crop of cane by virtue of its own appurtenances, then we do not call it cane land; we call it potential cane land. If you don't have water in the summer months you haven't got cane land.

Recross Examination.

My figure of \$40 to \$75 per acre for the Holt sugar cane lands is based upon the fact that they were not cane lands on their own merit.

CHARLES T. WILDER

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I am Tax Assessor for the First Taxation Division for the Territory of Hawaii and have been such assessor since February 1908. As such assessor I must ascertain and know the values of lands. Referring to the map, Exhibit C, I know those so-called Holt lands and have been over the same. I have made an examination of the lands to ascertain the value of them, as of May 2, 1910. I am familiar in general with market values and have been familiar with them from 1908 on. In connection with my business as Tax Assessor, I must consider the

(Testimony of Charles T. Wilder.)

market value of lands. Referring to the Holt sugar cane lands in 1910, I would say those lands were worth \$50 to \$60 an acre at that time. The pineapple lands would be worth \$75 to \$80 an acre at that time. I am familiar with the leases of the cane lands adjoining the Holt lands, as of May 1910, and also the pineapple leases as of such date. I know, also, the pineapple leases on the Warpio lands as of May 1910.

Cross-Examination.

I have been over the Holt lands even prior to 1910 in a general way. This value is without water available. Lands with water on them would be worth from \$125 to \$150 an acre. If the land had water available my figure would be the same. There were very few sales at that time. My valuations are based mostly on rentals received at that time. Sugar lands at that time in the Waialua district were based on leases at \$5 an acre; for instance, the Emerson lease, made way back in 1898 or 1899. In 1910 it still had some 30 or 40 years to run and would be a fair criterion of the value of the land. Notwithstanding any change that might have taken place either in the sugar growing industry or in the lands themselves by way of improvements or expenditures which might have been made upon them, the basic value would have remained virtually the same. Even assuming that such additional expenditures represented a matter which could not be taken from the land, fixtures that inure to the land itself, I would not consider that the land had any increased

(Testimony of Charles T. Wilder.)

value. I would not think that a building upon a leasehold piece of property would increase the property value to any extent. If very extensive improvements were put on the property it might increase the value to some extent.

“Q. Isn't that merely a matter of degree, the extent to which that value would be measured by the importance that would inure to the value of the property?”

A. You say waterways or water system. If you had no water to put in these waterways it would not increase it, but if you did it would increase it.

Q. We are not assuming taking waterways for the pleasure of it. We are assuming there are water ways susceptible of use. Wouldn't that increase it?

A. I don't think so.

Q. You don't think that land for cane producing purposes would be increased in value by the fact of being susceptible of putting in ditches and water systems on the land?

A. Not the land.

Q. Do you seriously mean that, Mr. Wilder?

A. I mean this: If you put ditches on the land with no water to put in them, I don't see where it could increase the value of the land.”

If there is water on the land then you consider them. In fixing sugar cane values I also had in mind the Gulick lease and leases on other lands.

(Testimony of Charles T. Wilder.)

In 1910 a $\frac{2}{3}$ interest in these Holt lands were assessed at \$48,000. That was assessed to the administrators of the Holt Estate. I do not remember placing that value but as a rule my deputies consulted me on values.

Redirect Examination.

I am also familiar with the Bishop Estate lease on the Kawaihoa lands adjoining the Holt lands. In referring to water being on the lands, I meant if the land itself had water rights sufficient to irrigate that area.

On

Further Examination,

with questions addressed by both counsel and the court.

If the owner of the land rented water, then the land would have an increased value. If there was water available and the owners could obtain it by lease or purchase, or any way, it would make the land worth \$125 to \$150 per acre. If water was purchased from the outside instead of having it available as appurtenant to the land, it would reduce the value to about \$125. My figure of \$50 to \$60 an acre is based on the capitalization of rents. A fair rate of capitalization at that time would be 8% to 10%. If we take these Holt lands by themselves and assume that the Holt lands themselves do not own water rights, but there is the Wahiawa Ditch owned by others, then the value of those Holt lands would be \$50 to \$60 per acre. I am pretty sure that the

(Testimony of Charles T. Wilder.)

Bishop Estate lands (Kawailoa) have water rights and I took that lease into consideration also in fixing the value of these lands.

The

DEPOSITION OF HENRY HOLMES,

taken in Honolulu on behalf of Respondent, pursuant to open commission, was read into the record as follows:

Direct Examination.

I am a practicing attorney in Honolulu and have been a member of the Bar of the Supreme Court since about 1892. During the year 1912 I was acting as attorney for Mr. J. M. Dowsett. I met Eliza R. P. Christian for the first time in Oxford, England, in 1912 at the Kentwell's house. In addition to Mr. and Mrs. Kentwell, there were in the house the children of Mrs. Kentwell, John D. Holt (father of Mrs. Christian), and Mrs. Christian herself. Mr. J. M. Dowsett, my client, was the assignee of an option that Mrs. Christian had given to one May K. Brown in 1907 (Exhibit 14-A), and I went to England on behalf of Mr. Dowsett to exercise that option. (Witness was then shown the option and recognized the signature of Eliza R. P. Christian.) I saw Eliza Christian sign her name to the conveyance by her to Mr. Dowsett at the Consulate in London at the time she carried out the provisions of that option. I think her signature is unusual and is a striking

(Deposition of Henry Holmes.)

signature. It would be very difficult to imitate or forge.

(Witness was also shown and identified the intermediate assignment of the document, Exhibit 14-A, namely, from May K. Brown to William Matson, and then from William Matson to J. M. Dowsett, duly recorded in the Hawaiian Registry of Conveyances.)

WITNESS RESUMES: When I went to Oxford, the door was opened to me in the Kentwell home by Mrs. Christian. I told her where I had come from and what my name was, and she invited me into the house. I went with her into a sitting room and there I saw her father, John D. Holt, whom I had known in Honolulu. I then told them the object of my visit. John D. Holt said, "Kentwell is acting for us, and you have got to tell Mr. Kentwell what it is you want." I stayed about ten minutes or a quarter of an hour with them, and we talked about Honolulu. I asked them how they liked living in Oxford and both of them answered. I remember John D. said that he found it very cold but he thought the country was very beautiful. Mrs. Christian said, "I think he doesn't like it because he misses his poi," to which statement John D. Holt agreed. In answer to the same question to her, Mrs. Christian said that she liked the cold, went out for one or two walks every day, usually with her father, and that she liked what she called "the life" in Oxford. The conversation was fairly general and was what was to be expected from a person arriving from Honolulu and

(Deposition of Henry Holmes.)

these two Hawaiians. Mrs. Christian seemed to be in very good health, judging by the color of her skin.

Within a week I met Mrs. Christian again at the same place in Oxford. Mr. and Mrs. Kentwell were there, the Kentwell children, John D. Holt and Mrs. Christian. My wife went with me. We were invited to stay to tea, which was served in the garden. Mrs. Kentwell said to Mrs. Christian, "Will you sit with us?" and Mrs. Christian answered, "No, I'll sit with the children." They had a table a short ways from us. There was a little general conversation. My wife or I would ask Mrs. Christian a question and usually get an answer, although I don't remember any particular part of the conversation. I do, however, remember one instance where Mr. Kentwell said that they would have some honey for tea, and asked me out to show me where he had his hives. He and I went out and put on masks. He had a big blow-pipe, lifted the top of the hive off, picked out the frame and went back to where the people were. The honey was cut out and some was given to the children and Mrs. Christian and some eaten at our table.

Mr. Kentwell seemed to understand the matter of the option very well, because of the experience that he had had in the case of Waialua when Mr. Withington went across. Kentwell stated, "If I could escape the obligation to carry out that option I wouldn't carry it out." We had a little discussion as to whether the whole amount could be claimed, inasmuch as this option went beyond the period

(Deposition of Henry Holmes.)

when I was there. He indicated very strongly the option would have to be carried out. Finally Kentwell stated that I would get what the option called for but no more. I was instructed by him to get counsel to settle the deed in London. I went to the Inner Temple in London and tried to get the deed prepared by Roger Bigman, a well known authority on trusts, wills and such like. He turned me over to a young man who was pushing ahead, Horace Freeman. I gave him the option, telling him what was wanted, and from that he drafted the deed from Mrs. Christian to Mr. Dowsett.

Before the execution of the deed, however, I saw Mrs. Christian at the hotel in Oxford. Mr. and Mrs. Kentwell and Mrs. Christian came to the hotel to dinner the night after the tea. John D. Holt didn't want to come. Mr. and Mrs. Kentwell, Mrs. Christian, my wife and myself were at dinner, which took place at about half past six or seven, and they were there until about ten. We talked about all sorts of things. Mr. Kentwell advised me to acquire John D. Holt's contingent interest.

In regard to conversations with Eliza Christian; she was a girl that would speak if she were spoken to. She is not a forward girl; shy, retiring, but never hesitated to answer any question which was put to her, but never would start a conversation. My wife talked to her. My recollection is that we met them at lunch the next day at the hotel. Eliza would talk when she was spoken to but I don't think otherwise.

I saw them next at the American Consulate in

(Deposition of Henry Holmes.)

London. Mr. and Mrs. Kentwell, Mr. John D. Holt, Mrs. Christian and I were there. The American Consul's name was either Westacott or Westmacott—I am not sure which. I arrived at the Consulate before they did. When they came in the Consul or Vice Consul said, "Oh, you Honolulu people are here again!"—evidently referring to the fact that he had met them when the Waialua transfer was made. He asked me what the business was and Kentwell said that they wanted him to take acknowledgments to three deeds. The first deed produced was the conveyance by Mrs. Christian to Mr. Dowsett of her share or interest in Makaha, according to the terms of the option. The Consul took the document in his hand and after looking over it asked Mrs. Christian if she understood that this was a transfer by her of some property in Honolulu, to which she answered yes. Then he asked her if she acknowledged that as her free act and deed—the usual form—to which she said she did. Before her signature was witnessed she signed the document before him and he witnessed her signature. I was present all the time.

(Witness having identified a deed dated May 21, 1912, Eliza R. P. Christian to John M. Dowsett, of her contingent interest in lands at Waianae, duly recorded in the Hawaiian Registry of Conveyances, the document was received in evidence as Respondent's Exhibit 4 in connection with the deposition of Henry Holmes. The document shows that it was executed by her and signed, sealed and delivered by

(Deposition of Henry Holmes.)

her in the presence of R. Westacott, Vice and Deputy Consul General of the United States of America in London, England. Then follows the acknowledgment by Mr. Westacott, the Vice Consul at the Consulate General in London, May 21, 1912.)

WITNESS RESUMES: There were two other deeds signed, one by John D. Holt and the other by Mrs. Kentwell. I had a certificate of deposit for what was the equivalent in England of \$7500. This I tendered to Mrs. Christian but her father said, "Oh give it to Kentwell." I asked Mrs. Christian if that was all right, to which she said "yes," and I handed it to Mr. Kentwell. I also had C.D.'s for Mrs. Kentwell and John D. Holt. The deeds were separate and the money was handed to them separately.

After the execution of these deeds, we went to a moving picture show. In 1912 moving picture shows in England were not common, but this was more than usual because it was colored pictures of the Durbar in India. Mr. and Mrs. Kentwell, John D. Holt, Mrs. Christian, my wife, and I went to the pictures. Mrs. Holmes had joined us at the hotel on the way. At the pictures I explained to Mrs. Christian something about the Durbar, for apparently the meaning of that word was not commonly understood. After seeing one of the films, John D. Holt left, saying to me that there was a very good fish shop near the theater.

Regarding any indications of abnormality about Mrs. Christian on any of these occasions: No, I saw

(Deposition of Henry Holmes.)

nothing and heard nothing that would possibly raise that question in the mind of anybody who had a mind of his own.

Cross Examination.

Mrs. Christian appeared to me about twenty-six or twenty-seven years old. When she opened the door I explained to her that I had come from Honolulu representing Mr. Dowsett. Her response to my inquiry as to whether I might come in was merely indicating that I might. There was no other conversation at the door, but probably an invitation to come in. I had known John D. Holt, Kentwell and Mrs. Kentwell before I arrived in Oxford. In the sitting room Mr. Holt spoke probably more words than Mrs. Christian but Mrs. Christian's answers for the old man were what struck me because they threw a good deal of light on the answer that the old man gave. I remember the answer of Mrs. Christian about the poi very well; I remember the old man saying that the beer in Oxford was very good. Mrs. Christian then spoke up and said, "He only gets it for dinner and supper." When I asked when Mr. and Mrs. Kentwell (who were out) would return, Mrs. Christian said, "They are out of town but they are coming back tonight." I said, "With the children?" She said, "Yes, with the children." John D. didn't answer that question.

Immediately after I got back to my hotel I wrote quite fully to my employer, Mr. Dowsett, a faithful

(Deposition of Henry Holmes.)

account of what happened, not putting in the details of the casual remarks but the general tenor of the conversation. Mr. Dowsett, has that letter. I did not write at the time with a view of indicating particularly what was said or done by Mrs. Christian. There was nothing in my mind by way of an endeavor to examine her particularly in any particular respect. My description of Eliza in the conversation I have testified to is that she was a person who would speak only when spoken to. I do not remember ever having an extended or even long conversation with her. Her vocabulary was like that of a Hawaiian girl, rather limited. I had no conversation with her about the details of the transaction before us. The transaction called for no negotiations. I went there to exercise an option she had given five years ago. I simply intimated to them, her and Mr. Kentwell, that Mr. Dowsett was prepared to exercise his option, and understood that the details would be handled by Mr. Kentwell as Mrs. Christian's business agent.

On the occasion that we were having tea in the garden, Mrs. Christian did not join in the general conversation. There was no shortage of space necessitating her sitting with the children instead of with us. I don't think there was six or seven feet between the two tables. The dinner at the hotel was in a private dining room. There was nobody there but ourselves. Mrs. Kentwell, as I remember, sat at my right and Mrs. Christian at my left.

(Deposition of Henry Holmes.)

The people were naturally sufficiently close for a conversation to be entered into between one and any other one. There was nothing in the situation which would impress itself on me any more than any other dinner party fifteen years ago. I do not remember anything Mrs. Christian said at the dinner, although I wrote Mr. Dowsett what Mr. Kentwell said. At the luncheon the next day Mrs. Kentwell offered to show my wife the colleges in Oxford. I am almost sure that Mrs. Christian referred to one of the colleges which she liked best. I do not remember anything else she said. At the Consulate, the three certificates of deposit were handed over to Mr. Kentwell, Mrs. Christian saying nothing to this. At the moving pictures she did not enter into a conversation about the Durbar. The only thing Mrs. Christian said was "yes" to the questions put her about having acknowledged the instrument, no other conversation. I believe that Mrs. Christian's diffidence about conversation was partly because people of the Hawaiian blood look upon the white man as somewhat superior and they defer a great deal. Mrs. Kentwell, on the other hand, had no hesitancy about talking, and the Hawaiians have a very good name for that type of person. When leaving the pictures I think Eliza was just as eager as her father to get to the fish shop.

Mrs. Christian's interest in the property at Makaha amounted to a one-third interest. There

(Deposition of Henry Holmes.)

were other interests outside, including the John D. Holt interest. I purchased from Mrs. Kentwell whatever interest she had. I think I paid her about \$750 and John D. Holt about \$1750.

Eliza spoke Hawaiian no more than I would expect a white person to who had lived here a long time.

(Respondent's Exhibit 5-M, a lease dated October 7, 1899, Trustees B. P. Bishop Estate to John Emmeluth and Albert E. Nichols, of the lands of Paalaa at Waialua—term 21 years, rental \$5550—was received in evidence without objection. This lease was surrendered for nonpayment of rent.

Counsel for Waialua then stated in response to a request that he produce certain vouchers further than those already produced that he was a director of Castle & Cooke and knew that the rule is in effect that after seven years no vouchers back of that period are kept, that under his instruction an examination had been made of the records of Castle & Cooke and that it had no other vouchers other than those produced in court. He stated, We could find no other vouchers than are produced already. Counsel for Petitioner accepted counsel's statement that such was the fact.

"The COURT: Your statement, Mr. Castle, is that you had a search instituted at the office of Castle & Cooke and Castle & Withington's, and you find no other vouchers affecting this transaction?

(Deposition of Henry Holmes.)

Mr. CASTLE: Yes, that is correct.

The COURT: How long has the seven-year rule of destroying vouchers of that character, older than seven years, been in force and effect?

Mr. CASTLE: I could not say. I should say the last ten years."")

A. LEWIS, JR.

was called as a witness for Respondent, the oath being waived, and testified as follows:

Direct Examination.

I am a member of the Bar of the Supreme Court of Hawaii. I arrived here July 4, 1900, and went into the practice of law after that. In 1910 I entered the Bank of Hawaii, becoming vice president and manager of the bank, and was there for ten years. Thereafter I practiced law, was a financial agent, Treasurer of the Territory of Hawaii for a period, and president of the Pacific Trust Company for a period. I am now engaged as a financial agent and attorney at law. In my business, particularly in the banking business. I had occasion to know the rates of interest on mortgages in May, 1910, or about that time. Such interest rate was 7% on a loan based on 60% of the appraised value. On agricultural lands it would be between 7% and 8%. Generally speaking, an undivided interest is worth less than the fractional part

(Testimony of A. Lewis, Jr.)

of the whole, particularly if it is less than a majority interest. A loan with that security alone, without other security to improve the equity, would not be favorably considered. A contingent undivided interest would only be looked upon in connection with other security. You would have to go back to the personal worth of the borrower.

Cross Examination.

In figuring a fair rate of discount for a future interest, the problem presented would be one of whether there was a certainty—no speculative interest—presented in the problem. With a certainty you take one rate; if it is not a certainty, you would have to take another rate. The rate would likewise be governed by the community in which the problem is presented. In 1910 in Honolulu I can't say that the rate would be less than 7%; it might approach 8% or as high as 10%. In the present instance, namely, that of the interest of Mrs. Christian, there is a problem dependent on two lives: first, of a woman twenty-four years old, and a man seventy-one years old. It is plain sailing that the younger person is presumed to outlive the older person, but that does not necessarily follow. This involves a chance which might be taken by speculators, and the only way they are going to pay for the risk is capitalizing it at a high rate of interest.

(Testimony of A. Lewis, Jr.)

Re-direct Examination.

There are other problems involved here than the question of just insurance problems; there is a business risk involved.

JAMES L. COCKBURN

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I have been connected with the Bank of Bishop & Company for thirty years. In 1910 I had charge of the loans of such bank, which would include mortgages. The average in 1910 on real estate mortgages was perhaps rather over 7%. We would loan not more than 60% of a conservative appraised value. Our bank did not to any extent take agricultural loans. They were generally of long duration and banks like to limit real estate loans to a reasonable time. Agricultural loans would take a higher rate of interest than the 7%—certainly not lower. I do not think we have made loans on undivided interests unless such interests were put in as a sort of sweetener with other securities.

Cross Examination.

There is a difficulty with undivided interests in the case of mortgage foreclosures, so that even a small undivided interest would detract from the loan.

T. D. COLLINS

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

My business is public accounting, auditor and tax solicitor. I have a company of my own and have been engaged in such business for eight years. I am also authorized to practice before the Bureau of Internal Revenue. I am familiar with tables showing the present worth of sums of money, and have prepared a table in consultation with other firms of accountants.

(Respondent's Exhibit 16-A was received in evidence, without objection, and reads as follows:

The Present Value of \$1.00 due 20 years hence:

7%	— .25842
8%	— .21455
9%	— .17843
10%	— .14864

Sum	Rate	Present Value
\$1,000.00	7%	\$258.42
	8%	214.55
	9%	178.43
	10%	148.64

Cross Examination.

The present value of \$1,000, postponed for a period of eight years, at 6%, is \$627.41.

JOHN GOMES DUARTE

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I am Deputy Tax Assessor for the District of Waialua and Wahiawa. Prior to that, I was surveyor and civil engineer for the Waialua Agricultural Company, a work which continued for about twenty-five years. The map, Exhibit C, comes from a map which I made myself. (Witness thereupon indicated on the map certain small holdings of taro lands carrying water rights at the lower part of the Map, Exhibit C.) I have been all over the lands indicated on the map and the lands above the map. The ditches indicated on the map were constructed in 1907 and 1908, primarily for the purpose of catching the storm waters in connection with the Wahiawa ditch.

Cross Examination.

By storm waters I mean particularly heavy flows which come down during heavy rains, and which otherwise would flow off and be lost. When we have heavy rains there is a great quantity of water that comes down there to these ditches and these ditches are apt to catch those waters and bring it to that elevation. Those ditches are there for the purpose of bringing those waters to the desired elevation. We could not build it way down at sea level or 50-foot elevation as we would not realize any benefit from it at all. These storm waters are waters which

(Testimony of John Gomes Duarte.)

reach the point where they are picked up. The whole flow of the stream is storm waters. There is some water always in the gulches, which I wouldn't consider very much, half a million or a million gallons, but not enough to justify any expenditure. We built the ditch not to catch a million gallons but to catch storm waters, twenty to forty million gallons. Waters in excess of 500,000 gallons would be storm waters.

JOHN H. WISE

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I am a Hawaiian by birth. I received my education at the Kamehameha Schools in Honolulu and then at Oberlin College in the United States. I was also connected with the Archives of the Territory of Hawaii. I am now professor of the Hawaiian language at the University of Hawaii and the Kamehameha Schools.

"Lolo," as a word itself, is just as broad as the English word "foolish" or "fool." The word "lolo," however, originated from the word "paralyzed." When a person has lost the use of his limbs, arm, leg, or both arms or both legs, they call that "mai-lolo." The word "mai" must be prefixed to the word "lolo" in order to define that kind of lolo. Then "lolo" came in use as to one whose mind is

(Testimony of John H. Wise.)

not quite clear on certain things. I doubt whether it goes to the extent of being weak-minded, but it is called, I think, in English, "simple-minded."

As to the word "ihepa," I think the word originated with the word "hepa," and the letter "i" was gradually prefixed. It refers more to the language that you use in answers to questions. If questions are not answered properly they generally call that man "hepa." Likewise, when the talk is not very clear in expression, it is called "hepa." It is a sort of hesitancy in speech and not answering the question according to the sense—probably not quite to the point of the question asked. "Ihepa" did not extend to feeble-minded. The Hawaiians never had any language to describe a person who was feeble-minded because it is quite a stretch from feeble-minded to a person with a good mind—a smart mind. "Lolo" would lean more towards feeble-minded, but not quite far enough to mean feeble-minded.

The word "naaupo" is a closer word to feeble-minded than the word "lolo," but I doubt very much if Hawaiians would ever extend "naaupo" to mean feeble-minded. "Naaupo" comes from two words: "Naau-po." The Hawaiians believed that the seat of knowledge came from the stomach; so "naau" means stomach, and "po" means dark; from that they get the word "Naau-po," meaning "your thinking apparatus is dark."

(Testimony of John H. Wise.)

Cross Examination.

I am familiar with a certain dictionary of the Hawaiian language originally compiled by Mr. Lorrin Andrews, Sr., and some years ago revised by the Reverend Henry Parker. I do not consider it a very authentic book and I do not think Mr. Lorrin Andrews, Sr., and Mr. Henry Parker had a very good knowledge of the Hawaiian language. I think my own knowledge is better. Although the Andrews dictionary is a public work, I do not think it can be relied upon. When the Andrews dictionary refers to "hepa" as "idiotic; destitute of ordinary intellectual powers," I believe they are both incorrect. I intend to publish a work myself and will show that Andrews and Parker were wrong in a good many instances. For instance, a good many of Hawaiian common words are not even in the Andrews-Parker dictionary. You must remember there are certain Hawaiian words which cannot be put into English and there are certain Hawaiian words which have no English equivalent, but Andrews and Parker have taken the English equivalents and tacked them on to some of the Hawaiian words, believing they would fit, but they don't. I have never seen a reliable dictionary of the Hawaiian language, and in my opinion there has never been published a Hawaiian dictionary that was reliable.

(Testimony of John H. Wise.)

Re-direct Examination.

(Witness was shown an earlier edition of the Andrews dictionary dated 1865 and was referred to the word "hepa," which is there described as "shaking of the limbs; palsy; sitting in silence," or, as an adjective, "mischievous, false, lazy.")

WITNESS RESUMES: "That is more to the point."

Re-cross Examination.

I think that the later dictionary is a distinct falling off in the reliability of the word because Parker left out several words that are in the earlier Andrews dictionary. I have never heard or known of the use of the words "hepa" or "ihepa" by Hawaiians to mean "feeble-minded." If any Hawaiians here testified that "ihepa" means "feeble-minded," that to my mind is an extraordinary thing.

WILLIAM L. STANLEY

was called as a witness for Respondent, the oath being waived, and testified as follows:

Direct Examination.

I am a member of the Hawaiian Bar. (Witness was thereupon referred to a statement in a letter by Annie Kentwell that he, Judge Stanley, had told her counsel, Mr. Campbell-Lee, that he knew that Mrs. Christian was non compos mentis. Counsel for Petitioner, in objecting to questions along

(Testimony of William L. Stanley.)

this line, stated, "Mrs. Kentwell is not in a position to substantiate all the evidence in her deposition. If that is true, I submit it is not what she gives of her own knowledge but is relayed through another." The court overruled Petitioner's objections to questions to Judge Stanley on this point.)

WITNESS RESUMES: It is not true that I knew that Mrs. Christian was non compos mentis. I did not know Eliza Holt at all, and I have never expressed any opinion whatever as to the mentality of Mrs. Christian, of which I was absolutely ignorant.

(At this point counsel for Respondent, pursuant to an earlier request of counsel for Petitioner for a list of payments to Eliza R. P. Christian as rentals under the lease or as consideration for the execution of the lease (Ex. A-8), submitted a list of payments, which statement was received in evidence without objection as Petitioner's Exhibit A-36.

Such exhibit consists of over four pages of detailed cash payments as required under the terms of said lease of March 17, 1905, from April 1, 1905 up to and including April 1, 1929, and also in the increased amounts under the extended lease from the Helemano Real Estate Trust in 1920 (Ex. A-3). The schedule likewise shows rentals still being paid under the terms of said original lease (Ex. A-8) as to one one-twenty-seventh interest still outstanding, and also as to another outstanding one-twenty-seventh interest leased under said

(Testimony of William L. Stanley.)

original lease (Ex. A-8) and extended for a further period of 19 years from April 1, 1930, at an increased rental from April 1, 1919. (Ac. Ex. 10). It shows that the rentals provided for under the lease, or extensions, were paid regularly by Waialua to the parties lessor therein named or their assigns or successors, totalling some \$172,208.55. It shows no payments of rentals to Eliza R. P. Christian and no payment of money to her for her execution of the instrument. It was stipulated that the exhibit contained a complete list of the payments of rent under the lease, and also no payments of money to anyone for the execution of the lease.

Counsel for Respondent in connection with said exhibit stated: "Yes, these are the payments under the lease, except also there is that 1906—I mean the payment to Annie Kentwell in London, in connection with this deed, of Five Thousand Dollars. Annie Kentwell was paid for her interest in the lease.")

Respondent rested.

(Petitioner then offered in evidence part of the instructions given by the court in connection with the case of "Territory of Hawaii vs. Hall" in May 1902, in which the mental condition of the complainant is called to the attention of the jury and the jury is directed to consider that circumstance

in rendering a verdict. Upon an objection being interposed thereto, same was sustained by the court and the offer refused.)

MRS. HESTER LEMON

was called as a witness for Petitioner on rebuttal and having been previously sworn, testified as follows:

Direct Examination.

I am Custodian of the Records of Vital Statistics in this Territory. I have with me the register of marriages from 1891 to 1896 for the entire Territory of Hawaii. These records show that Marie Cummings (Respondent's witness Mrs. Ann Parker) was married to S. G. Otis King November 13, 1894, at Kealia, Island of Kauai.

CHRIS HOLT

was called as a witness for Petitioner on rebuttal, was sworn, and testified as follows:

Direct Examination.

I knew Keawekane who testified as a witness here. I did not see Keawekane, who testified for Respondent, living at the John D. Holt place. He was either a cousin or a nephew of Mrs. John D. Holt, my aunt. He and his family lived at Makua, about six miles from Makaha, and his father and Mrs. Holt's father went fishing. I was familiar with all

(Testimony of Chris Holt.)

of the people who were living in John D. Holt's home whenever I was down there. I am in a position to say that Keawekane never did live there. He used to bring fish over to my aunt and take home taro, maybe once a week or twice a month—I don't remember exactly.

Cross-Examination.

My testimony is confined to the vacation periods in which I went to Makaha—for the vacations when I was attending school at Punahou. I do not know anything about what happened while I was not there.

FATHER VICTORINIS

was called as a witness for Petitioner on rebuttal, was sworn, and testified as follows:

Direct Examination.

I am connected with the Catholic Cathedral on Fort Street. Before a person can be admitted to Communion they must have a certain knowledge of the Christian doctrine. At the present time, and ever since 1910, children are not admitted to make their first Communion until eleven or twelve. The practice today is Confirmation after the first Communion.

Cross-Examination.

I arrived in Hawaii October 10, 1911, but first came to Honolulu in 1915. The Church would have confirmed feeble-minded people since they con-

(Testimony of Father Victorinis.)

firmed children. I do not know of my own knowledge of any instance where a feeble-minded person was confirmed. In 1894 and up to 1910 a certain knowledge was required of the Christian doctrine, and that catechism was written out in question and answer form for that express purpose. Prior to 1910, therefore, when children took their first Communion, they had to know their catechism.

Redirect Examination.

Previous to 1910 children were admitted to Communion at the age of ten, eleven or twelve.

MISS ADELAIDE FERNANDEZ

was called as a witness for Petitioner on rebuttal, was sworn, and testified as follows:

Direct Examination.

At one time I attended the Sisters' Convent up on Fort Street. I know a woman around town named Minnie Paloney. Mrs. Paloney came out to my house two or three times and talked to me about this case. I have not heard the word "ihepa" used before 1924.

MRS. HATTIE WALTERS

was called as a witness for Petitioner on rebuttal, was sworn, and testified as follows:

Direct Examination.

I knew Eliza Holt at the Catholic Sisters. When I first went there she was in Sister Marceline's class, and I was in Sister Margaret's class. I knew a girl by the name of Alice Martin, who is now Mrs. Fisher; she was in the same class with Eliza Holt. Alice Martin in her first year was in the same class with Eliza Holt. She was promoted but Eliza remained behind. I left school before either Alice Martin or Eliza Holt. I know a woman named Mary Ann Wright. She interviewed me twice with a view to procuring my testimony in this case.

Cross-Examination.

I had been to school before I went to the Catholic Sisters. A number of small girls were left behind besides Eliza. Eliza was the biggest. When Alice Martin was promoted Eliza was still in the baby class. Alice Martin started in a little higher grade; one a little higher than the babies. I remember distinctly that when Alice Martin went to school she started in the baby class.

MRS. ANNIE K. HARRIS

was called as a witness for Petitioner on rebuttal, was sworn, and testified as follows:

Direct Examination.

I am the mother of Mrs. Matilda Norton, and used to deliver poi to the Kentwells. My daughter used to be on the beach with me at that time. We didn't have big water at that place; the water comes up to the knee. If the water was too high we didn't allow any of the children to go down to the water. They generally played around the beach; they simply played on the beach and got their clothes wet. I know Minnie Paloney. About two weeks ago she took me up to some office,—whose it was I don't know, but it was to the office of that gentleman (indicating counsel for Waialua).

Cross-Examination.

We had no bathing suits in those days. The children would use their ordinary clothes and when I asked my daughter why her clothes were all wet she would say, "I went in swimming with Eliza Holt."

CHARLES M. HITE,

called as a witness in rebuttal on behalf of Petitioner, the oath being waived by counsel for Respondent, testified as follows:

Direct Examination.

My name is Charles M. Hite, and I am a member of the firm of Ulrich & Hite, attorneys practicing

Testimony of Charles M. Hite.)

aw in Honolulu. I heard the testimony of Mrs. Paloney in which she said that I had offered to pay her the sum of \$500 to be a witness in this case. Her testimony is absolutely false. I have known her for a number of years and have helped her in various troubles of her own of a private nature. She was in my office in the month of July and I talked to her at that time as I have talked to scores and hundreds of people. I asked her if she knew Eliza Holt. She told me that she did; that she had gone to school with her. I asked her if she considered she was feeble-minded, and she said no, she was not; "I think she was feeble in the head." Then I pressed her for details, but she could give me none, and that matter ended except that I then took up with her—knowing that she was friendly with Carrie Robinson and some of the oldtimers in town—the matter of seeing for me some of these Hawaiians, Mrs. Lillie Auld, Mrs. Carrie Robinson, Mrs. Manuel Reis. I told her that I had been unable to see these women and asked her if she would kindly see them for me, and she said she would. That is the last time I saw her in my office.

Cross-Examination.

I don't know the date, but know it was in the month of July. I was admitted to the Bar in 1917 and have been practicing in Honolulu ever since, with the exception of my War service. This is by no means my first litigation. I believe that I am fairly familiar with the ethics of the profession, interview-

(Testimony of Charles M. Hite.)

ing witnesses and the presentation of evidence in courts. The majority of the witnesses produced by my firm in this case have spoken the English language.

“Q. Mr. Hite, in addressing Minnie Paloney and others in this case, did you suggest to them first that Eliza Holt was ihepa before you asked them what they knew about the case?

A. May I answer you this way: In Minnie Paloney's case I do remember that I asked her first of all whether or not the girl was feeble-minded. I would like to go ahead and answer the rest of your question. My procedure all depends on circumstances; whether a person is willing or unwilling to talk—(here witness was interrupted by counsel for Respondent.) I have not first suggested to the witness that Eliza Holt was ihepa before I asked them what they knew about the case.”

MRS. ELLEN LORENZEN

was recalled to the stand for

Further Cross-Examination
by the Petitioner, and testified as follows:

It is not a fact that a few weeks before this trial started I had a conversation here in the Judiciary Building at which were present Mrs. Miriam Auld and Mrs. Joe Dwight, during the course of which conversation I said that Eliza Holt was not normal;

(Testimony of Mrs. Ellen Lorenzen.)

nor did I further in the course of any such conversation refer to an incident that I recalled when she jumped from a chiffonier on to a bed, in a pregnant condition. I did not tell either Mrs. Miriam Auld or Mrs. Dwight that I had stated Eliza was jumping from a chiffonier on to a bed in a pregnant condition. I have never seen her jump from a chiffonier on to a bed and I did not say that.

(By stipulation of counsel, Respondent Waialua's Answer to the First Amended Petition having been filed, replication thereto was waived, and the replication to Respondent's Answer to the First Petition was allowed to stand in lieu of a second replication. It was further stipulated that the maiden name of Minnie Paloney was Mignonette Parker.)

MRS. CUSHINGHAM

was called as a witness for Petitioner on rebuttal, was sworn, and testified as follows:

Direct Examination.

I remember John D. Holt, his wife Kaahanui, his daughter Eliza, and sometimes a woman by the name of Kapele helping in the housework, being there in the John D. Holt household at Makaha. When I lived down there I knew a family known as Keawekane. At no time during the period I was there was

(Testimony of Mrs. Cushingham.)

there any person, young man or boy, other than those persons living in the John D. Holt home regularly or going to school from there. I don't remember that their little children played with Eliza or in the home of John D. Holt or in my house. The Keawekane family lived in Makua valley, living about a half mile distant from the home of John D. Holt. Kaahanui was a nice-looking woman, stout, but with no cocked eye or crossed eye..

Cross-Examination.

I did not personally stay in the John D. Holt household. We owned our own home. Keawekane used to visit at the John D. Holt home, but not to live. I believe he was a cousin of Kaahanui's mother. I could not say how often I saw him there, but I saw the whole family there. He may have spent the night there but not lived there for five years. I do not say that he never spent the night there. But that he lived there five years and went to school, that would be impossible. There were only two houses. John D.'s and ours. It is impossible for him to have lived in the house. The Makua cowboys were over at the John D. Holt home but I wasn't intimate with them. I have not seen Keawekane for forty years. I can't recollect him, for it is a good many years ago, and a person changes.

MRS. ROSALIE H. DWIGHT

was called as a witness for Petitioner on rebuttal,
was sworn, and testified as follows:

Direct Examination.

I am a clerk in Judge Watson's court, and know Mrs. Lorenzen. I was present at a conversation had with Mrs. Lorenzen relative to Eliza Holt and to this case generally, some time shortly before the trial. She stated that when Eliza Holt was pregnant she used to get on top of the table and jump off, and she did not believe that any person doing that was normal. Mrs. Auld, Assistant Probation Officer, was sitting alongside of me.

Cross-Examination.

No one else was present except us three.

SISTER LEOCADIA

was called as a witness for Petitioner on rebuttal,
was sworn, and testified as follows:

Direct Examination.

I have the record books showing the records of the attendance of girls. Consulting these records, Mignonette Parker (Respondent's witness Minnie Paloney) was a boarder for about three months from September 4, 1899 to December 4, 1899. In addition, I remember because I was there and she was here a very short time. If the books are exact, then that is the only time. Eliza Holt had left on

(Testimony of Sister Leocadia.)

June 18, 1899 and Mignonette Parker came the following September after Eliza had left. Consulting these same records Marie Cummings (Respondent's witness Mrs. Ann Parker) was a boarder here for about six years from December 1886 to July 1892, at which time she left. If Marie Cummings had come back here for two or three months there would be something in the records, but not for just a short time. Further consulting these records, we had a girl here named Lulu McWayne (Respondent's witness Mrs. C. K. Quinn) who was a boarder for about seven years. She entered July 1886 and remained until October 1893. She continued to take music lessons until December 1893, but she ceased to be a boarder in October 1893. I don't know whether she was taking music lessons but her name shows she bought a music piece in July, 1894. Alice Martin was a boarder for about four years, from April 1896 till April 1900. She wasn't well, and I don't think she was at the Catholic Sisters during all that time. She went home but she came back. I couldn't tell you whether Eliza Holt ever took Communion. I myself did not know her to take Communion.

Cross-Examination.

I am testifying from my account books which give the dates they pay their board. The other records were lost when Mother Judith had softening of the brain. They were swept in the box. I could not say from my own knowledge whether certain girls were in certain classes. If a girl came here for a visit, say for two weeks after she had left the Convent, it

(Testimony of Sister Leocadia.)

would not be reflected in the account books. A girl coming in from the outside for music lessons might meet boarders if they happened to meet in the yard or in the music room—naturally they would be allowed to talk, though Mother Judith was strict in keeping the two classes of pupils separate. My statement as to Alice Martin is solely from the account books. My account records are complete. I can say of my own knowledge that between 1894 and 1899 music pupils never played at all with the day pupils. Mother Judith was very strict about having boarders kept separate and having no communication with the outside.

I knew Mrs. Kekumano. I was present when Mr. Hite called up on the telephone and I suggested to Mr. Hite to call Mrs. Kekumano as a witness. I went to the telephone and asked her if she remembered Eliza Holt. As she had been here so long, she might know Eliza Holt.

(Counsel for Petitioner then asked that the other Sisters come forward, and the following transpired:)

“SISTER LEOCADIA: They refuse to come. The last time they told all they knew and could not add anything to their testimony. It was useless to come today they told me. During and since this case came up our daily and most fervent prayer to God has been that justice and truth will prevail, no matter how it comes out.”

(Counsel for Waialua moved to strike such statement, but the Court took no action on the motion.)

DR. JAMES R. JUDD

was called as a witness for Petitioner on rebuttal, was sworn, and testified as follows:

Direct Examination.

I am a physician and surgeon, and have for many years last past practiced my profession in the Territory of Hawaii, and have been the physician attendant upon Eliza Yates Mackenzie. She is seventy-two years old and has had a great deal of illness, and at the present time she is confined in bed and has been in bed for several months with a broken hip. It is common with old people. She has a good memory for past events at times—a very active memory. Of recent events her memory is not as good. That is a matter which is common with old people. I have never made any special observations as to her memory. I am not a mental expert; I could not give any scientific summary of her mental condition unless things were checked up; for instance, she might repeat a thing accurately, and the next time subsequently alter it in some way, but considering her age and her illness, I should say that she has a fairly good memory—at times confused, uncertain and unreliable.

MRS. MIRIAM AULD

was called as a witness for Petitioner on rebuttal,
was sworn, and testified as follows:

Direct Examination.

I am the Assistant Probation Officer for girls,
working with Mrs. Lorenzen. I heard Mrs. Lorenzen
and Mrs. Dwight talking, and Mrs. Lorenzen said,
"What do you think of a girl jumping from a table
when she is pregnant?" I heard the name Eliza
used, and a statement that a normal girl would not
do that.

Cross-Examination.

Mrs. Dwight is a daughter of James L. Holt, one
of the named Respondents in this case.

JOHN D. HOLT, JR.

was called as a witness for Petitioner on rebuttal,
was sworn, and testified as follows:

Direct Examination.

(Over the objection of Respondent, on the ground
that the same was not proper rebuttal, witness testi-
fied:)

I recall a conversation where Mr. Hite was pres-
ent in which Mrs. Lorenzen discussed Eliza Holt's
mental condition. I remember the exact words. She
said: "You, Johnny, know as well as I do that Eliza
Holt was loco. They called her ihepa and feeble-
minded. Don't you think so?" She also told the
attorney to go out and get certain persons who had

(Testimony of John D. Holt, Jr.)

just come from England who would make good material witnesses, and she said to me: "Johnny, you know what Eliza's condition was; what the matter with her was. Can't you get witnesses?"

Cross-Examination.

Mr. James L. Holt is my second cousin and I am a nephew of Annie Kentwell.

(By stipulation of counsel, Exhibit F-8 was received in evidence and reads as follows:

**RAW SUGAR PRICES 1900 to 1928 INCLUSIVE
AVERAGE MONTHLY PRICE FOR 96°
CENTRIFUGAL SUGAR AS COMPILED
BY WILLETT & GRAY**

	Cents per lb.
1900.....	4.566
1901.....	4.047
1902.....	3.542
1903.....	3.720
1904.....	3.974
1905.....	4.278
1906.....	3.686
1907.....	3.756
1908.....	4.073
1909.....	4.007
1910.....	4.188
1911.....	4.453
1912.....	4.162
1913.....	3.506
1914.....	3.814

Testimony of John D. Holt, Jr.)

Gents per lb.

1915.....	4.462
1916.....	5.786
1917.....	6.228
1918.....	6.447
1919.....	7.724
1920.....	12.326
1921.....	4.763
1922.....	4.632
1923.....	7.020
1924.....	5.964
1925.....	4.334
1926.....	4.337
1927.....	4.730
1928.....	4.229

Counsel for Respondent asked that the record show that service of the Respondent Waialua's Answer had been duly made upon Mr. John R. Desha, the attorney for James Lawrence Holt.

Counsel for Petitioner renewed his motion to reopen Petitioner's case for the purpose of obtaining the deposition of Mr. Bennett, the bank manager in Oxford, stating that he (counsel) had promised to present a written motion but was content to rest on the oral motion heretofore presented. Counsel stated that he had been advised that such deposition had been taken in England and therefore offered such deposition in connection with his motion to reopen without the physical presence of such deposition in Honolulu, notifying Court and counsel that it would be further offered when it arrived. On objection by

(Testimony of John D. Holt, Jr.)

Respondent, the Court, in sustaining the objection to the offer, ruled:

"The Court has already made its rulings in sustaining the objection. If the deposition should arrive prior to the Court finishing the matter up, the Court feels that if any error is being made and if any rulings heretofore made are changed, the Court will indicate that as a changed ruling, and will indicate that it has or has not, and use the deposition as a part of the record. The record may stand now as heretofore with the objections as sustained. If there is any change in them the Court will indicate it clearly in any decision.")

P. H. BURNETTE

was called as a witness for Petitioner on rebuttal, was sworn, and testified as follows:

Direct Examination.

I was at one time associated with Lawrence Kentwell in the Hawaiian Realty & Maturity Company. I remember a Mr. Medeiros who was there also. I remember that Eliza Christian used to come to the office of the Hawaiian Realty and Maturity Company. Referring to the testimony of Mr. Medeiros that she came there and was there for several days, in an effort to keep her away from her husband, I do not recall that. She could not read. She never held any kind of rational conversation with anyone.

(Testimony of P. H. Burnette:)

Cross-Examination.

I might have said a word or two at a time. I never did see her try to read.

MRS. P. H. BURNETTE

was called as a witness for Petitioner on rebuttal, was sworn, and testified as follows:

Direct Examination.

I knew Mrs. Kentwell and I was at their home at Waikiki very frequently, every Saturday. So far as I observed, she did not do household work for the Kentwells.

(Counsel for Petitioner offered the proceedings of the appointment of George H. Holt as Guardian of Eliza R. P. Christian, as to which the court stated that no final ruling would be made on the offer but it would be left as one of the issues incidental to the main issues of the case.)

(Petitioner rested.)

By stipulation of the parties, the question of accounting for the undivided $1/3$ interest in the Holt lands in possession of the Respondent, Waialua Agricultural Company, since April 10, 1922, was left over to await the determination of the trial court on the issue of the right of cancellation and avoidance of the deed of May 2, 1910, on the plead-

ings then before the court. Following the decision of the trial court on May 11, 1929, the following proceedings took place and the following testimony was taken. Preliminary, however, to the taking of testimony, Respondent Waialua Agricultural Company noted its objections to the accounting on the issues raised in its answer, and further, that there could be no accounting during the time of the lease already in evidence (Exhibit A-8), that is to say, the lease of March 17, 1905, for a period of 25 years from April 1, 1905, and that there likewise could be no accounting without Annie Kentwell being made a party to such proceeding. The court overruled the objection of Respondent and ordered the accounting hearings to proceed. Counsel for Petitioner thereafter stated, referring to Petitioner's Exhibit Ac. B-1 (being document mentioned hereinabove as 29 in the list of stipulated documents):

"We want the record to show definitely at this time that with respect to the lease or a lease to the Hawaiian Pineapple Company from this Respondent (as to the date and terms of which we will make more definite), under the rule of law requiring us to make an election as to whether we will elect to repudiate that lease or affirm that lease and accept the benefits of it, we do elect to affirm the lease and accept the benefits of the lease as we contend we are entitled not only to the rental which has been paid the user at this time but with respect to the users under the lease subsequent to this time. I think that would be clear otherwise, but I don't want there

to be any question on it, inasmuch as one case in Hawaii has said there must be a definite election." Counsel further stated that the principal question to be presented to the court was whether or not the Petitioner was entitled to profits as distinguished from mere rental value on the lands used by Waialua.

The court ruled that the accounting should date from April 10, 1922, (the death of John D. Holt), when the interest of Mrs. Christian would have vested, and that the accounting was based on an ouster by Waialua under a claim of sole ownership which would give Mrs. Christian, as an ousted cotenant, a proportionate share in all rents received from third parties during the period after April 10, 1922, and also her proportionate share in the reasonable rental value of all the area actually used and occupied by Waialua itself. The court further ruled that if there should be any question of profits entering into the problem at all, it could only get into the case on the Respondent's opening the subject by way of defense in reducing the claim for rental value.

Petitioner's Exhibit Ac. B-1 was received in evidence without objection, being an indenture of lease dated January 10, 1923, between the Waialua Agricultural Company, Limited and the Hawaiian Pineapple Company, covering the lands in controversy as well as other lands, and being the lease hereinabove referred to as 29 in the stipulated documents. After discussion by counsel, the court ordered:

"Let the record show that the Respondents are willing to abide by an equal distribution per acre

basis and if the Petitioners desire any other basis they will have to put the facts on to show it."

Waialua was collecting rentals on pineapple lands prior to the effective date of the Hawaiian Pineapple lease (Ex. Ac-B-1), namely January 1, 1923. There was thereupon received in evidence a document showing the proportion of rentals attributable to pineapple leases on the Holt lands for the period April 10, 1922 to December 31, 1922, of which rentals Petitioner's proportionate share, if so entitled thereto, would be the sum of \$12,333.

It was stipulated that the total area of the Holt lands covered by the lease (Ex. Ac. B-1) was 6476.45 acres and that these lands were the subject of this litigation.

Petitioner thereupon offered in evidence certain leases in connection with values on sugar cane lands, counsel for Respondent stipulating to the facts in regard to such leases as follows:

(1) Lease executed August 30, 1923, Oahu Railway & Land Company to Waialua; area 58.74 acres; term 20 years from May 2, 1924; annual rental \$3174.80, or \$20 per acre;

(2) Lease executed January 1, 1924, Addison Gulick to Waialua; area 91.65 acres; annual rental \$1325.35, or an annual rental of approximately \$14 per acre;

(3) Lease executed January 1, 1924, Francis Gulick to Waialua; area 105.50 acres; term 30 years; annual rental \$1660.80, or an annual rental of approximately \$15 per acre;

(4) Lease executed October 1, 1925, Oscar P. Cox to Waialua; area 19.31 acres; term 23 years; annual rental \$325, or an annual rental of approximately \$17 per acre;

(5) Lease executed January 1, 1923, Estate of Henry Wharton to Waialua; area 25 acres; term 10 years; annual rental \$300, or an annual rental of \$12 per acre;

(6) Lease executed January 1, 1923, Kekuewa to Waialua; area 25 acres; term 10 years; annual rental \$500, or an annual rental of \$20 per acre;

(7) Lease dated June 5, 1925, Ii Estate to Oahu Sugar Company; area 1318.23 acres; term 32 years; annual rental \$22.50 per acre for the first 10 years, and thereafter \$25 per acre;

(8) Lease January 1, 1925, Ii Estate to Oahu Sugar Company; area 9.5 acres; term 9 years; annual rental of \$20 per acre;

(9) Lease executed January 1, 1925, Ii Estate to Oahu Sugar Company; area 11.61 acres; term 9 years; annual rental of \$20 per acre;

(10) Lease executed April 26, 1923, Bishop Estate to Oahu Sugar Company; area 146.15 acres; term 17½ years; annual rental \$2700, or an annual rental of approximately \$19 per acre;

(11) Lease executed during the year 1920, Territory of Hawaii to Honolulu Plantation; area 150 acres; rental 5% of sugar produced, less marketing expenses;

(12) Lease executed in 1918, Damon Estate to Honolulu Plantation; area 1804 acres, of which 1545.36 acres were in cane on December 18, 1918; term 10 years; annual rental \$30,000;

(13) Lease executed January 27, 1927, Damon Estate to Honolulu Plantation, of land "having a total area of 1451.66 acres, of which 1223.91 acres are or are deemed to be cane lands"; term 15 years; annual rental \$28,687;

(14) Lease executed in 1922, Territory of Hawaii to Kekaha Sugar Company, of 5,000 acres of cane lands on the Island of Kauai; term 15 years; rental of $7\frac{1}{2}\%$ of the sugar produced, less marketing expenses. This lease carried with it the Government water rights for mountain and other water;

(15) Lease, Louise Gulich Whitaker to Waialua; area 268.10 acres; rental \$2681 per annum, or an annual rental of \$10 per acre. The lease, however, covered both sugar and other lands;

(16) Lease dated October, 1923, Catherine McGrew Cooper to Honolulu Plantation; area 52.627 acres; term 10 years; rental \$1200 per annum, or an annual rental of approximately \$23 per acre per annum;

(17) Lease executed February 28, 1929, Bishop Estate to Honolulu Plantation; area 42.79 acres; term 11 years 4 months; annual rental \$820, or an annual rental of approximately \$19 per acre.

(Counsel for Petitioner then offered to prove from the records of the Waialua Company the actual income and profits accruing to it from the date of the vesting of Petitioner's interest in 1922 to date. In refusing such offer the Court stated:

"As the Court has heretofore indicated, the question seems to the Court to be the reasonable rental value of the Petitioner's share of the Holt lands, and not the question of an attempt to segregate or allocate profits of the Waialua Agricultural Company made as indicated by the record which is before us, not only out of the use of land or out of the use of the Holt lands by themselves, but out of the organization of the various lands and organization of its sales force and marketing force, none of which has reference to the tenancy of the land. The Court, for the reason stated and more elaborately indicated heretofore, will refuse the offer."

The offer was also made to introduce evidence showing what reasonable charge should be made in arriving at the profit derived and which was derived from the lands by reason of the lease. Counsel for Waialua objecting to such offer, the Court sustained the same.)

MR. JAMES GIBB.

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I was for many years manager of the Honolulu Plantation on the Island of Oahu and I have had occasion to become familiar with the matter of rentals paid for sugar lands on this island and I am familiar with the Holt or Helemano lands concerned in this litigation. As a result of my study, in my opinion a fair, reasonable rental value for those portions of the Holt lands which are designated as sugar cane lands and totaling 1622 acres, from April 10, 1922 down to the present time, would be, if it were a cash rental, not less than \$15 per acre per annum, and if a percentage rental, 5%, with a minimum of say \$15 per acre. Cash rental would include areas necessary for reservoir sites, railroads, and the like. In connection with the percentage basis, you deduct the marketing expenses, which run about \$10 per ton, and pay the lessor on the net received. In fixing these values, I took into consideration existing leases and also new leases that have been entered into in the last ten years or more, chiefly cash rentals, and I likewise considered, in connection with such leases, the differences existing between the types of lands involved as compared with these lands. In connection with cash rentals, it is on the basis that the lessee pays the taxes. In addition to the rental

(Testimony of Mr. James Gibb.)

value. I would expect to have the Plantation incur whatever expense was necessary to bring additional water to the land. My value is based on the fact that the land itself does not have water but with the idea that water was available to it.

Cross Examination.

I understand the Holt sugar lands run from an elevation of 20 feet up to 700. In my opinion the value of the Holt lands on a rental basis from 20 feet up to 250 feet would be approximately \$20 per acre; from 250 feet up to 500 feet, say \$15 per acre; and from 500 feet to 700 feet about \$10 per acre. The cost of putting water on the lands themselves would have a material bearing on the rental value of the lands, and the cost of pumping water to the higher elevations would be material.

I am familiar with the leases offered in evidence by Peittioner. The leases from the Ii Estate to Oahu Sugar Company are all low-lying lands, say up to an elevation of 50 feet, so this is an advantage that Ii Estate lands have. The Ii Estate lands are comparable with the Holt lands but I would not consider that the Holt lands would have such a high rental value. Likewise, the productivity of the respective lands would make a difference. The Holt lands do not have short ratoons. The lands leased by the Bishop Estate to the Oahu Sugar Company would run up to an elevation of about 60 feet and would be more comparable with the Ii

(Testimony of Mr. James Gibb.)

Estate lands, both being able to short ratoon. The land leased by the Damon Estate to Honolulu Plantation would carry pump water up to a maximum elevation of 65 feet. Most of the Damon Estate lands are very flat lying pieces. The production there is usually good. It would compare in rental value more particularly with the Ii Estate lease. I do not know which area produces the most sugar—the Damon Estate or the Holt lands—but I would say, as a plantation man, that the Damon land would produce a little more than the Holt. The other Bishop Estate lands leased to Honolulu Plantation, and the Cooper lease, are all low-lying lands.

In connection with the Kekaha lease, that includes all the government water from the mountain, and since they have the government water they are now going up higher on the ridge. Kekaha is in a part ideal for sugar cane. I do not know the two leases of lands on the Pioneer Plantation, namely, the Wahikuli and Honokawai. In considering the productivity of these various lands, I have assumed good management in any case. I did not have in mind the possibility of renting these Holt lands to outsiders but merely considered such value in relation to Waialua as sugar cane lands. I did not go into the question if a third party had the Holt lands whether such party could get water from the plantation and raise cane. I took into consideration that I was dealing with an undivided interest. Some-

(Testimony of Mr. James Gibb.)

times an undivided interest brings a higher rental than a full fee simple interest; if it is a third of a big piece of land there is far more chance of that being rented than a smaller portion. In this particular case I should say there would not be much difficulty. A $1/3$ interest in the whole of the Holt lands would rent to Waialua on the same proportionate basis, but as to outsiders I would rather not be pressed on the point. I feel that on the Holt lands short ratoons could be raised up to 250 feet elevation, but the mere fact they don't short ratoon does not indicate bad management, as Waialua has a large area of low-lying lands which they would be most likely to take in preference to short ratoons.

Re-direct Examination.

The percentage basis is regardless of the productivity of the particular area. It has been my observation that there has been a marked increase in the last ten years or so in cash rentals. In placing my value of \$15 per acre cash rental for the Holt lands, I took into consideration that the low-lying lands covered by the Damon lease to Honolulu Plantation, the Ii Estate leases to Oahu Sugar Company, and other low-lying lands, have a greater productivity and greater value as far as the land is concerned. In connection with the Oahu Railway & Land Company lease to Waialua, rental there is \$20 per acre per annum, but it is often the case that a plantation will pay a little more for small areas running through another land, as that does, than

(Testimony of Mr. James Gibb.)

they would for a bigger area, though as far as the productivity of the land is concerned, there should be no difference in the rental. My testimony of the value of the Holt lands is based on the assumption that water could be procured for such land.

● Re-cross Examination.

Even though water might not be procured, the Holt land might have produced cane profitably at the 700-foot elevation, and this would apply on down to the 500-foot elevation. In connection with the Oahu Railway & Land piece-leased to Waialua, I did not notice that the Waialua Company was putting a fill across the gulch, or what effect this lease might have on any rights to place tracks in regard to other areas of the plantation.

Re-redirect Examination.

In placing my value on the Holt lands, I have not considered rights of access to other parts of the plantation. To put water on the upper part of the Holt lands would cost 6¢ per million gallons foot lift. In fixing the values of the Holt lands for rental purposes, I had in mind the lower third would be worth \$20 per acre, the middle \$15, and the upper \$10,—\$15 being a fair average figure. The cost of pumping up to the 500-foot elevation would be 6¢ per foot per million gallons, or \$30 per million gallons raised 500 feet.

(Respondent's Exhibits Ac. 2, Ac. 3, and Ac. 4 were received in evidence, without objection, and read as follows:

(Testimony of Mr. James Gibb.)

EXHIBIT Ac-2

Statement Showing Production of Holt Lands for the
Years 1922 to 1928 inclusive

Year	Area in Acres	Tons	Tons Sugar Per Acre
1922	900.17	3781.71	4.172
1923	524.22	2367.35	4.516
1924	770.18	4963.27	6.444
1925	670.80	3931.20	5.860
1926	729.20	5879.96	8.064
1927	808.91	5965.11	7.374
1928	769.15	6861.80	8.921

EXHIBIT Ac-3

Statement Showing Prices Received for Sugars for the
Years 1922 to 1928 inclusive

Year	Price Per Ton
1922	\$ 91.77
1923	133.25
1924	112.00
1925	83.99
1926	84.46
1927	90.19
1928	85.67

EXHIBIT Ac-4

Statement of Marketing and Containers Expense for the
Years 1922 to 1928

Year	Marketing Expense Per Ton	Container Expense Per Ton	Total Per Ton
1922	\$9.28	\$2.07	\$11.35
1923	9.85	2.19	12.04
1924	9.71	2.48	12.19
1925	8.86	2.05	10.91
1926	8.35	2.58	10.93
1927	8.57	2.64	11.21
1928	8.45	2.44	10.89)

JAMES BUCHANAN THOMPSON

was called as a witness for Respondent, was sworn and testified as follows:

Direct Examination.

I am at the present time manager of the Waialua Agricultural Company. Prior to that, I was manager of the Oahu Sugar Company. Prior to that, for eighteen years with the Hawaiian Commercial & Sugar Company, being graduated there from one position to another, starting in as a luna and up to assistant manager. I was particularly in charge of the fields and the agricultural department at Hawaiian Commercial on the Island of Maui. I have been on the Pioneer Mill Company fields on the Island of Maui and am familiar with the lands of Wahikuli. I would say they would compare very favorably with the Holt lands and, as far as climate is concerned, they would be better. Pioneer is a place very well adapted to growing sugar cane: a hot place with not so much wind. It is hotter in Wahikuli than on the Holt lands. The soil at Wahikuli is rather stony and I think it is better soil than the Holt lands. The stony part is on the lower part of the lands.

(Respondent's Exhibit Ac. 5 was received in evidence, without objection, and is Government Lease No. 1078, dated May 6, 1919, for the lands of Wahikuli, to the Pioneer Mill Company, of an area of cane lands of 1479.70 acres, in addition to which there is reservoir land, plantation railroads, etc.,—a total of 1972 acres, of which 439 are either waste

(Testimony of James Buchanan Thompson.)
or pastoral; rental \$11,000 per annum; term 15
years.)

WITNESS RESUMES: I have also been over the lands of Honokawai at the Pioneer Mill Company. Such Honokawai lands are a little better than the Wahikuli lands.

(Respondent's Exhibit Ac. 6 was thereupon received in evidence, without objection, being Government Lease No. 1841, dated May 10, 1927, for cane land of 931.41 acres, with certain taro land and other lands, making a total of 1153.89 acres, at an annual rental of \$6,000.)

WITNESS RESUMES: At the present time I should say that perhaps 500,000 gallons, or perhaps 700,000 gallons, of water are required to produce a ton of sugar. In connection with the Oahu Railway lease, there are also 40 acres which we use for our tracks, sidings, and anything else on which we do not pay any rent. The Whitaker, Kekuewa and Cox leases at Waialua are all on low-lying pieces of land at an elevation of not more than 30 or 40 feet.

Cross Examination.

I went over these Pioneer Mill lands in 1916 or 1917, going over the lands just as from one plantation to another on observation trips. I do not know how much sugar was being produced on the lands covered by the Honokawai and Wahikuli leases but I do know that they had very fine cane on those lands at the time—better looking cane than they had on the Holt lands when I went to Waialua in 1924. In my opinion it would cost no more to culti-

(Testimony of James Buchanan Thompson.)

vate the Pioneer lands than the Waialua. At Pioneer they have the Honokawai Ditch that runs up to 800 or 900 foot elevation. There is a mountain stream that takes care of the Honokawai and Wahikuli lands and they also have pumps. I do not know how much they do by pumping and how much by gravity, nor the comparative cost of putting water on those lands, as compared with the Holt's.

The Pioneer lands continue up farther for sugar purposes than the 700-foot elevation. They start at sea level. I don't know how much higher than 700 feet. The upper part of the Pioneer lands are steeper than the Holt.

CHARLES T. BAILEY

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I am Land Commissioner for the Territory of Hawaii. I am familiar with the lands of Wahikuli on the Pioneer Mill Company Plantation. That is all dry land. The same is true of the Honokawai lease.

Cross Examination.

I negotiated these leases. At the time of the negotiation of these leases they were under similar tenure. The present rentals I think are somewhat higher.

(Testimony of Charles T. Bailey.)

Re-direct Examination.

Both of these lands were in sugar cane at the time of the negotiation of the new leases.

MR. CARL BISCHOFF

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I am the Assistant Civil Engineer at Waialua Plantation and have been assistant engineer for the past three years and have prepared exhibits in this case.

(Respondent's Exhibits Ac-8 and Ac-9 were received in evidence, without objection, and are in words and figures as follows:

EXHIBIT Ac-8

	Holt Lands in Contour	Below Higher Elevation
0- 50 feet	75.19	
50-100 "	80.27	155.46
100-150 "	75.90	231.36
150-200 "	98.76	330.12
200-250 "	79.25	409.37
250-300 "	74.02	483.39
300-350 "	84.78	568.17
350-400 "	103.79	671.96
400-450 "	132.53	804.49
450-500 "	128.67	933.16
500-550 "	106.41	1039.57
550-600 "	160.87	1200.44
600-650 "	124.85	1325.29
650-700 "	212.48	1537.77
	1537.77	

(Testimony of Mr. Carl Bischoff.)

EXHIBIT Ac-9

Holt Estate Lands

Classification of Cane Lands, Pump and Mountain Water
Between 50-ft. Contours—June, 1929

Contours	Areas Between 50 ft. Contours	Areas Under Pumps 7 & 8	Areas Under Pump 10	Areas Dependent on Mountain Water
0- 50	75.19	22.57	23.13	29.49
50-100	80.27	—	80.27	—
100-150	75.90	—	75.90	—
150-200	98.76	—	98.76	—
200-250	79.25	—	79.25	—
250-300	74.02	—	74.02	—
300-350	84.78	—	79.62	5.16
350-400	103.79	—	13.03	90.76
400-450	132.53	—	—	132.53
450-500	128.67	—	—	128.67
500-550	106.41	—	—	106.41
550-600	160.87	—	—	160.87
600-650	124.85	—	—	124.85
650-700 or to) Wahiawa Ditch)	212.48	—	—	212.48
Totals	1,537.77	22.57	523.98	991.22

Note. The above areas are net, taken from latest field surveys, and do not include areas of level, straight or supply ditches.)

WITNESS RESUMES: The total number of acres given is 1537.77. This is an apparent discrepancy from prior exhibits showing 1550.95 acres of cane land, the difference being merely the difference between the gross and net area, for since 1924 we leave out the level ditches. The mountain water can be brought all over the plantation, if we have enough. The Poamoho Pump, known as Pump

(Testimony of Mr. Carl Bischoff.)

No. 10, was completed in April, 1928. At Waialua, and more particularly on the Holt lands, between 4,000,000 and 5,000,000 gallons of water per acre per crop is applied.

Cross Examination.

Prior to April 1928, as appears by reference to Exhibit Ac.-9, there were only 22.57 acres in the entire Holt area which was watered in any way by pumps. Such small area was supplied by Pumps 7 and 8—Pump 7 below a small portion of the Holt lands and Pump 8 in the Opaepala section. This small area of 22.57 acres could also be supplied with mountain water, but the mountain water is not generally taken down that low unless there was an abundant supply.

(It was admitted by counsel for Waialua that including the area of camps, reservoirs, and the like, of 72 acres, there was a total of 1622 acres and a fraction of lands used to produce cane.)

WITNESS RESUMES:

Re-Direct Examination.

Pump 10 was designed for about 1200 acres of sugar cane land and is used in connection not only with the Holt lands but other lands. Exhibit Ac.-9 shows that about 523 acres on the Holt land can be reached by Pump 10, the balance of the 1200 acres being other lands.

(At this point, by agreement of counsel, the following documents or statements were received in evidence:.

(1) Lease executed February 10, 1919, Edward S. Holt to Waialua, leasing his $1/27$ interest in the Holt lands, and his $1/9$ interest in Grant 1092, for the remainder of the term under the lease of March 17, 1905 (Ex. A-8) and for the further term of 19 years from the expiration of said lease, Exhibit A-8, to the 1st day of April, 1949, upon the same terms and conditions as set forth in said lease, but at an annual increased rental of \$1200 from said April 1, 1919, in lieu of the \$333.33 payable under said lease of March 17, 1905 (Ex. Ac.-10);

(2) Statement showing the tons of sugar produced per acre per crop on the several Ii Estate leases with the Oahu Sugar Company, showing, for the years 1922 to 1925 inclusive, an average of 7.01 tons, and for the years 1926 to 1929 inclusive, 7.82 tons per acre (Ex. Ac.-11);

(3) Statement showing tons of sugar per acre per crop produced on the fields under lease by the Bishop Estate to the Oahu Sugar Company from the years 1923 to 1929 inclusive, showing an average of 10.86 tons sugar per acre (Ex. Ac.-12);

(4) Statement showing production records on the Wahikuli lease and the Honokawai lease, for the years 1922 to 1928 inclusive, at the Pioneer Mill Company (Ex. Ac.-13), the statement showing an average of 7.56 tons sugar per acre per crop for the Wahikuli lease and 7.15 tons for the Honokawai;

(5) Statement showing tons of sugar per acre

per crop produced under lease by the Honolulu Plantation Company from the Bishop Estate (Ex. Ac-14), showing tons of refined sugar per acre on one field of 2,285 acres at an average of 7.46 tons under the period 1919 to 1927 inclusive, and on another field of 38.49 acres at an average of 6.09 tons over the same period. As Honolulu Plantation produces refined sugar instead of the raw, it is necessary to add 7% to the Honolulu Plantation records to translate the same into terms of raw sugar as in the Oahu or Waialua records;

(6) Statement showing tons of sugar per acre per crop produced on the fields of the Damon Estate under lease to the Honolulu Plantation (add 7% for correction from refined to raw sugar), such production being, in tons of sugar per acre for the respective crops, as follows: 1916—6.025; 1917—7.208; 1918—6.645; 1919—6.843; 1920—3.916; 1921—4.677; 1922—4.432; 1923—4.78; 1924—6.38; 1925—6.017; 1926—9.24; 1927—10.06; 1928—9.04.

Counsel for Petitioner then offered to prove that the amount of water rising on the upper lands and reaching the Holt lands at the intakes was an amount over and above that required for the uses of upper riparian owners that a certain number of billion gallons a year had been used for commercial and agricultural purposes by Waialua over a period of years over which the accounting ran, and that he would further prove the value of such waters in terms of annual rental value. Upon objection being interposed thereto by counsel for Waialua, on the ground that Respondent had a lease from the

Bishop Estate for such waters, the offer was refused.

It was stipulated between counsel that either party could use and refer in their argument to any standard work on mathematical tables, mortality tables, life expectancies, or otherwise, without physically introducing such books or tables into evidence.

It was admitted by counsel for Petitioner that at the time of the accounting hearing James L. Holt was not financially responsible or would not be able to respond to any judgment which might be rendered against him.

Mr. Ulrich, of counsel for Petitioner, filed an appearance for Annie Kentwell personally and as Receiver. Respondent moved to strike the same from the files as being improper in form and substance, collusive with complainant, and filed too late in the cause, and under the pleadings Annie Kentwell is not shown to be a party in interest and does not offer to do equity. The court overruled the motion to strike.

Counsel for Respondent admitted that demand was made upon Waialua on April 5, 1928, the suit herein being instituted on May 8, 1928.)

TRIAL ON REMAND.

Following the decision of the Supreme Court of Hawaii on April 18, 1931 (31 Haw. 817), and in pursuance to the Order of Remand issued thereon, a trial on remand was had.

Respondent, on November 18, 1931, and November 20, 1931, filed and made a motion, supported by affidavits, to take the depositions of Eliza R. P. Christian; Oxford, England; Dr. Cyril Burt, London, England; Dr. Smith Ely Jelliffe, of New York; Martin Alfred Baker of London; A. W. H. Taylor of Oxford; C. Goldsworthy of Oxford; Annie H. Kentwell of Oxford; Dr. Alfred Tregold of London; and Mr. and Mrs. Frank Hudson Jenkins of Oxford, as to matters showing the mental competency of Eliza R. P. Christian, and more particularly showing her mental competency to have executed said lease of March 17, 1905 (Ex. A-8) and the instrument of August 31, 1906 (Ex. 2-G). The evidence sought by Respondent related to opinions and observations of the witnesses named subsequent to 1909 and 1910, except as to the London mental experts named, the request in the case of these experts being for an examination by them of Eliza R. P. Christian; and except as to Dr. Smith Ely Jelliffe, a mental expert of New York, whose testimony would relate to the mental competency of Eliza R. P. Christian based upon his study of her testimony as set forth in the transcript of the Hall trial (Ex. 4), and upon information given him by counsel for Respondent. The Court denied respondent's motions to take said depositions, ruling:

"* * * I have been re-reading the decision of the Supreme Court in connection with the affidavit,—in connection with the pleadings as they now stand, and in my opinion and I so find from

the record before me that the issue of mental competency has been decided by the Supreme Court as the law of the case; that the Supreme Court has made a finding well within the issues of the proceedings that Eliza Christian was a congenital imbecile; and it is for that reason that they do find her incompetent in 1910; and that the question at issue before ~~this~~ court on the remand or amendments bring in the two additional deeds is the question of determining what shall be done on voidable instruments, whether or not the instruments should be void under all the equity of the case or whether or not they should be allowed to stand and therefore modify any question of damages that might have arisen but for these instruments from the date of the vesting of the title in Eliza Christian on the cancellation of the deed of May 2nd, 1910. Stated perhaps a little bit more clearly and distinctly, I am brought to the conclusion that the issue of Eliza Christian's incompetency is not before this court."

Thereafter the following proceedings took place:

"Mr. CASTLE: We will of course have a great deal of evidence on the question of mental incompetency. It would seem useless procedure, in view of Your Honor's ruling, to call those witnesses into court and offer their evidence if this is a definite ruling.

The COURT: I am bound at this time to make a definite ruling on that: as finding upon further hearings of the court that the issue of

Eliza Christian's competency or incompetency is not before this court in this stage of the proceedings, the court in that connection because of that ruling would have to deny the examination of any witness bearing upon her alleged competency or incompetency."

The Court ruled that testimony of witnesses as to observations and descriptions of the Petitioner subsequent to 1909 would not be received, but that if Respondent had a type of evidence which came between expert evidence already received and the former type, it should make specific application for the admission thereof.

The Court further ruled that as to the facts and circumstances surrounding the execution of the lease (Ex. A-8) and the instrument of August 31, 1906 (Ex. 2-G) a closed commission might issue to take the testimony of Annie Holt Kentwell but that as to Eliza R. P. Christian the Court stated that it felt that it was being asked to do a futile thing to either require or allow an examination of one who has been adjudicated, as far as this proceeding is concerned, a congenital imbecile, and that the issue of whether or not she was or was not an imbecile was a matter that was before counsel when they were taking the testimony in England at the former trial, that then and there was the place for taking such testimony. The Court further ruled that the only restriction imposed upon a closed commission directed to Annie Kentwell was that her testimony should not have to do with any further questions as

to Eliza Christian's mental competency. Thereupon Respondent declined to ask for a closed commission to Annie Kentwell.

On January 7, 1932, after issue joined, Respondent renewed its motion, supported by affidavits, to take the depositions of the parties mentioned in said motions of November 18 and 20, 1931, together with the additional depositions of Bessie Alice White, Manor Park, England; Kate Nixey, Stamford, England; and Sophia Pacey, Oxford, England, as to matters showing the mental competency of Eliza R. P. Christian, and more particularly showing her mental competency to have executed said lease of March 17, 1905 (Ex. A-8) and the instrument of August 31, 1906 (Ex. 2-G). The Court denied Respondent's motions to take said depositions, and reaffirmed its prior ruling that the issue of competency as of any time had been decided and was no longer before the Court on any of the hearings under the Second Amended Petition.

On February 29, 1932, the hearing on remand commenced in Honolulu before the Circuit Court of the First Judicial Circuit, Territory of Hawaii, Judge Cristy presiding. Petitioner was represented by Barry S. Ulrich and Charles M. Hite, of the firm of Ulrich & Hite, of Honolulu; Respondent Waialua Agricultural Company, Limited, by Herman Phleger, of the firm of Brobeck, Phleger & Harrison, of San Francisco, and Alfred L. Castle, of the firm of Robertson & Castle, of Honolulu. Annie Kentwell having filed her answer and submission to the jurisdiction of the Court, and James

L. Holt being represented by John R. Desha. Both sides announcing that they were ready, the trial proceeded as follows:

Counsel for Petitioner stated that on the questions dependent upon the execution of the lease of March 17, 1905 (Ex. A-8) and the assignment of rentals of 1906 (Ex. 2-G) and which were to be considered in determining the question of their cancellation, the Petitioner rested upon the record and evidence heretofore before the Court; that in reference to the accounting there would be no further evidence as to the twelve thousand odd dollars representing rentals accrued and paid on the pineapple lands prior to the lease of 1923 (Ex. Ac-B1) and no further evidence in so far as the proportionate allowance of the rentals under the latter document, but that further evidence would be adduced with respect to sugar rentals since the original decree entered October 16, 1929.

Counsel for Respondent stated that he wished the record to show that in participating in the present proceedings on remand the Respondent did not waive or withdraw any of the previous pleadings or motions heretofore made or interposed by it, but that each and every one of the same were reaffirmed.

Counsel for Petitioner re-offered all evidence heretofore taken and received by the Court in the prior proceedings but stated that such evidence was before the Court without such offer or reception. Counsel for Respondent Waialua objected to such offer of evidence on the grounds, first, that such evidence had not been introduced in a former trial between the same parties with the same issues;

second, upon the further ground that it had not been shown that the witnesses who previously testified were dead or otherwise unavailable; and, third, upon the further ground that such testimony was hearsay as to the Respondent Waialua and as to Annie Kentwell, the predecessor of Waialua. After argument, the Court ruled: (1) that as to any witnesses heretofore examined on the part of the Petitioner that the Respondent wished to cross-examine, the Court would be prepared to permit such cross-examination; and (2) that the evidence as appearing in the prior records, except for such additional examination as may be desired, was to be considered and be a part of the record and hearings then being had, and that if there were any witnesses in the previous hearings that either party desired examined, such examination would be permitted, if they are witnesses within the Territory.

JAMES GIBB,

a former witness for Petitioner, was called as a witness for Petitioner, was sworn and testified as follows:

Direct Examination.

The fair and reasonable average annual rental value for the Holt sugar lands at the present time would be \$15 per acre if a cash rental, or 5% if it was a percentage rental, with a minimum of \$15 per acre, lessee paying taxes, and that such would

(Testimony of James Gibb.)

be a fair average rental per acre per year for the time which has intervened since the prior hearings.

Cross Examination

I am testifying on the lands as fully improved lands.

Re-direct Examination.

I have in mind the land as it has been for the last two years as under cultivation in cane. It is for the same cane land as I testified to in prior hearings, with water available, and without considering the cost of bringing water to the land.

Re-cross Examination.

The present price of sugar is 2.85¢ per pound, it was approximately 3.95¢ to 4¢ a pound in August, 1929.

Further Re-direct Examination.

I am holding to my same figure of value, despite the lower price of sugar, in part because Waialua has doubled her tonnage of sugar per acre in the last ten years, considerably higher than it was in 1929. This is a condition general to plantations in the Territory. Plantations today produce more sugar per acre than they formerly did. If a renter of the land in question paid \$15 per acre per annum he would get the use of that land with whatever happened to be on it at the time of lease.

Petitioner thereupon rested.

Respondent thereupon moved that the petition be dismissed as to the issues involving the lease of

(Testimony of James Gibb.)

March 17, 1905 (Ex. A-8), and the instrument dated August 31, 1906 (Ex. 2-G), raised by the amendment set forth in Petitioner's Second Amended Petition, upon the following grounds:

That the evidence before the court on this proceeding fails to make out a case entitling the Petitioner to the cancellation of the said lease of 1905 or the said assignment of 1906, or to any of the relief prayed for, because (a) there is no evidence to sustain the allegations of the second amended petition bearing upon the said 1905 lease and the said 1906 deed; (b) there is no evidence sufficient to justify a finding that the Petitioner was mentally incompetent at the date of the execution or delivery of either the 1905 lease or 1906 assignment; (c) there is no evidence that at the time of the execution or delivery of either of said instruments Respondents knew, or that Annie Kentwell knew, of the alleged mental incompetency of Petitioner or had knowledge of facts which would put a reasonable person upon inquiry, which inquiry, if honestly pursued, would lead to such knowledge; (d) there is no evidence excusing Petitioner's delay in bringing this suit, but, on the other hand, the suit is barred by the laches of Petitioner, her guardian and her attorney; (e) the evidence does not show there is equity in Petitioner's behalf which would justify either the relief prayed for or any relief.

Counsel for Respondent further stated that the foregoing motion was based in part on the fact that

(Testimony of James. Gibb.)

there was no evidence before the court with respect to the issues raised by the amended pleadings other than the testimony of Mr. Gibb who had just left the stand.

The court thereupon, upon the record, overruled the motion to dismiss, stating that all matters contained in the motion had been argued at length before. On further discussion by counsel, the court ruled that the testimony of any witnesses having to do with issues that would affect damages or in connection with any matters that Waialua had done with the lands raising equities in its behalf would be received, and that any evidence bearing upon the circumstances attendant upon the execution of the two instruments, or indicating equities attaching to or failing to attach to said documents might be further gone into, but that the issue of mental competency was not before the court on any of the issues presented in the hearings on remand, on the ground that such evidence had been foreclosed by the decision of the Supreme Court of Hawaii in said case in 31 Haw. 817. Counsel for Respondent thereupon moved that the testimony of all witnesses who had heretofore testified in this trial under the original pleadings, excluding the testimony of Mr. Gibb just adduced, be stricken upon the ground that it was incompetent, irrelevant and immaterial, was not introduced responsive to any issues framed in the case when the evidence was introduced, and was hearsay as to Respondent. Counsel for Petitioner stipulated that without going through the testimony

(Testimony of James Gibb.)

of each witness, Respondent's motion would be considered as a motion to strike the testimony of every witness testifying in this case, witnesses for the Petitioner as well as for the Respondent, excluding the testimony of Mr. Gibb just adduced, and that Respondent has moved to strike separately each question propounded and each answer given of such witness.

The court thereupon denied the motion of Respondent, again holding that the issue of competency was not before the court and was a closed issue. The court further ruled that all the evidence theretofore taken in the case was before the court in the sense it was part of the case, except that the court would not re-examine any of the evidence that had already been considered and ruled upon by the court and the appellate court on the question of competency, and that the only evidence in the issues for re-examination was the evidence as to what equities or damages were involved in the question of the return of the land ordered reconveyed by the former decree.

On the basis of written motions, being the said motions to take the depositions of the parties named in the motions of November 18 and 20, 1931, and January 7, 1932, hereinbefore referred to, and further motion filed this day to take the depositions of Mrs. Phyllis Colley, Droitwich, Birmingham, England, and Charles Richard Fox, Chief Constable, Oxford, England, on behalf of Respondent, showing the mental competency of Eliza R. P. Christian.

(Testimony of James Gibb.)

and more particularly her mental competency to have executed said lease of March 17, 1905 (Ex. A-8) and the instrument of August 31, 1906 (Ex. 2-G), counsel for Respondent moved to take the testimony of the witnesses named in said motions, requesting that they be examined for all purposes, including the mental competency of Petitioner at the time of the execution of said lease (Ex. A-8) in 1905 and the execution of said instrument (Ex. 2-G) of 1906. Counsel for Petitioner called the attention of the Court to the fact that the testimony of the witnesses was being offered on the question of competency alone, to which counsel for Respondent replied that the purpose and object of these motions was to secure a definite ruling during the course of the trial on the question of competency. The court denied Respondent's motion on the ground that the question of competency was not before the Court. The court stated that it had ruled that an examination might be had of Annie Kentwell in connection with the facts transpired upon the execution of the 1905 and 1906 documents; that it had ruled that closed depositions would be permitted as to her, and that advantage had not been taken of such ruling by Waialua. Relative to the matters and things presented for the examination of witnesses Mrs. Phyllis Colley and Mr. Charles Richard Fox, that inasmuch as it affirmatively appeared that the matters and things that these witnesses could testify to occurred in 1931 and were matters wholly dealing with the competency of Eliza Christian that the

(Testimony of James Gibb.)

request to take the testimony of these witnesses would be refused. Counsel for Respondent thereupon announced it was Respondent's purpose to invoke further rulings from the Court on the introduction of oral testimony bearing upon the competency of Petitioner at the time of the execution of the 1905 lease and 1906 deed.

JOHN H. WISE

was called as a witness for Respondent to testify as to the competency of Eliza R. P. Christian in 1905 and 1906, and particularly in connection with witness's recollection, observations and opinion of Eliza Christian around the years 1902 to 1907 inclusive. After argument, the court held again that the question of competency was foreclosed and sustained the objection of counsel for Petitioner to going into the question of competency, either with Mr. Wise or any other witness, bearing upon the period in question and affecting the two documents which are specifically made a matter of investigation in this hearing, namely, the lease of March 17, 1905 (Ex. A-8), and the assignment of 1906 (Ex. 2-G), the court announcing that such ruling was based upon the assumption that the evidence offered was wholly in favor of Respondent, but that until the findings of the Supreme Court upon the previous record that Eliza Christian was shown to be a congenital imbecile were set aside by a superior court and the

(Testimony of John H. Wise.)

cause remanded for re-examination on that issue, it was without jurisdiction to go into the question of competency; that if the Supreme Court's ruling had been wholly confined to Eliza Christian's competency in 1910, an entirely different ruling would be made, but that the decision of the Supreme Court finding that Eliza Christian was, upon the evidence of the former record, a congenital imbecile and finding her at all times incompetent to execute a conveyance, thus making the lower court's original findings more conclusive, precluded the admission of evidence of competency. The court further ruled that its reason for interpreting the Supreme Court's mandate in such fashion was that the original pleadings were based upon the larger fields of congenital imbecility, and that the testimony throughout the former record began with the birth of Eliza Christian and went up to the date of the then hearing, and upon that evidence both courts found that it was not simply a question of the evidence as to her being incompetent in 1910 alone, but the record showed that at all times she had been a congenital imbecile.

In order to foreclose Respondent from producing any further witnesses on the question of the competency of Petitioner, the court thereupon excused Respondent from producing in court any other witness who might be called on the question of competency, stating that the court understood that the witness John H. Wise had been called to raise the issue, the court holding again that the decision

(Testimony of John H. Wise.)

of the Supreme Court of Hawaii (31 Haw. 817) and the Order of Remand made following such decision, precluded the trial court from inquiring into her mental capacity in 1905 or 1906.

Counsel for Petitioner moved to reopen the case in order to introduce in evidence the said lease of March 17, 1905 (Ex. A-8) and the assignment of 1906 (Ex. 2-G), which motion was granted, and by stipulation of counsel the said documents were received and the exhibits took the designation of Petitioner's Exhibits R-1 and R-2 respectively on these proceedings on remand; but in order to avoid confusion the same exhibit numbers, Exhibits A-8 and 2-G, respectively, are used, as in the previous hearings.

Petitioner thereupon rested.

Prior to the testimony of the following witness, counsel for Petitioner stated that he did not object to the reception of any evidence which might bear on the question of notice as to the mental condition of Eliza R. P. Christian. The court thereupon ruled that Petitioner having rested, Petitioner was bound by the evidence heretofore introduced and the ruling of the Supreme Court of Hawaii in said case of *Christian vs. Waialua* (31 Haw. 817); that actual notice on the part of Waialua of any mental incompetency of Eliza R. P. Christian had not been shown; that the issue of actual notice was not now

before the court but was foreclosed against Petitioner and that Petitioner's rights must depend upon the construction of law as to the rights of a respondent who had no actual notice of incompetency and acted in ignorance of the actual fact. The court further ruled that it was the court's understanding that counsel for Petitioner had not relied on further notice by not producing further evidence but on the ruling of the court that there was no actual notice.

MR. E. D. TENNEY

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Honolulu and have lived here since 1880. I am president of the Waialua Agricultural Company, the Respondent in this case. I have been connected with Waialua since its formation and organization. I knew Mr. W. W. Goodale in his lifetime (Mr. Goodale having died since the prior hearings) very intimately. He was the first manager of the company and he remained as such manager for a period of 25 years or more until he retired somewhere along 1924 or 1925. Mr. Goodale had general management and supervision of the active affairs of the company at Waialua in relation to the development and organization of the plantation—not only its development and activities, but acquirement of the lands; in fact, general charge, both of the agricultural operations and also of the

(Testimony of Mr. E. D. Tenney.)

handling and acquiring of land. He was the one we looked to who handled all those affairs.

I am familiar with the Holt lands and first knew them very many years ago, but without any particularly detailed consideration, until the time of the formation of the Waialua Agricultural Company. Prior to the leasing of the Holt lands, Mr. John F. Colburn approached both me and Mr. Goodale to inquire if we would be open to considering a proposition to lease such lands. My recollection is that under certain conditions we would consider the matter and he was referred to Mr. Goodale for further consideration of any proposition he might have to submit. The negotiations then continued between Mr. Goodale and Mr. Colburn.

When the negotiations got to a point that they definitely submitted a proposition, Mr. Goodale asked me to come out and go over the land with him to size up the situation. I went over the major portion of the lands that were considered available and suitable for the uses of the Waialua Agricultural Company at that time. This was, I think, not long before the lease which was consummated. The Holt Estate lands were covered with a very dense growth of lantana and klu and scrub guava, and there were sections of them that were very rocky. You couldn't have very detailed inspection of the surface of the ground because there were only here and there little patches where such was possible. It was one of the heaviest growths of underbrush I had ever noticed anywhere. There was no appearance of the land ever having been under cultivation.

(Testimony of Mr. E. D. Tenney.)

There was no discussion between Mr. Goodale and myself of the possibilities of growing any pineapples on the land. That was before the days of the development of pineapples in that section. In fact, the upper land that we controlled in the neighborhood of the Wahiawa dam—the so-called Galbraith Estate lands—which immediately adjoined the upper Holt lands, were regarded by the then expert pineapple people as not suited to the purpose. We had endeavored to lease some of these lands to pineapple growers but they were rejected as not suited. The leasing of pineapple lands, therefore, did not enter into the picture at all.

The board of directors, in considering various land matters at Waialua and the acquiring of certain lands, had appointed a committee of three, consisting of Mr. Goodale, Mr. W. R. Castle and myself, charged with the duty of considering a lease of these lands and with authority to make such a lease. Mr. Goodale is now dead and Mr. Castle, on account of his health, is not available as a witness.

(Witness was thereupon shown a letter dated March 7, 1905, from Mr. Goodale to him, which he identified, which was received in evidence, over objection, as Respondent's Exhibit S-1, and which is as follows:

(Testimony of Mr. E. D. Tenney.)

WAIALUA AGRICULTURAL
COMPANY, LTD.

Waialua, Oahu

March 7th, 1905.

Official.

Mr. E. D. Tenney,
President Waialua Agricultural Co., Ltd.,
Honolulu.

Dear Sir:

Herewith you will find enclosed a copy of a lease of the Holt Estate lands, prepared by Messrs. Colburn and Ashford, for our approval. I enclose also Mr. Colburn's letter to me.

I have read over this lease carefully, and it seems to me to cover the ground more fully than either of the other leases, and to be much nearer what we need. So far as I can see the signatures to be obtained to this lease will make us perfectly safe in going ahead with the improvements on the property, the digging of ditches and building of siphons.

I would have preferred however to have the lease for a longer term than twenty-five years. The end of the lease will be within the natural lifetime of all of the people whom it is proposed to have sign the lease. For our interest it would be better to have the lease for so long a term that the present holders cannot make plans for their own futures based on the termination of this lease.

(Testimony of Mr. E. D. Tenney.)

The two old men, James and John, have signed a deed conveying all their rights in the land in trust to John F. Colburn. His signature would therefore seem to cover all of their interests during their lifetime, and the signatures of James Lawrence Holt and Mrs. Christian would seem to cover the same rights after the death of the two old men.

I hope that you will be able to do something about this before the sailing of the steamer "CHINA".

From the study I have given the case, and from what has been said to me by Messrs. Castle & Withington and Mr. Colburn, I recommend the execution of the lease in this form if it is impossible to arrange for a longer term.

Very truly yours,

(Sgd) WM. W. GOODALE

Manager Waialua Agricultural
Company, Limited.

Diet. WWG.

WITNESS RESUMES: I received this letter on March 8th. Mr. John F. Colburn is dead.

(Witness thereupon identified a letter from Mr. Colburn to Mr. Goodale, referred to in said Exhibit S-1, as having been received by him, which letter was received in evidence, over objection, as Respondent's Exhibit S-2, and reads as follows:

(Testimony of Mr. E. D. Tenney.)

KAPIOLANI ESTATE, LIMITED
Honolulu, T. H.

March 6, 1905.

Mr. W. W. Goodale,
Manager Waialua Agricultural Co., Ltd.,
Waialua, Oahu.

Dear Sir:

Enclosed find draft of the proposed lease by the heirs of the R. W. Holt Estate to your Company. Kindly peruse same at an early date and return as soon as possible with such modifications or amendments as you may see fit or be advised to make.

A meeting of all but one of the O. J. Holt heirs, by their attorneys, have been held at my office to discuss the matter of the lease to you upon the lines indicated in the enclosed document. While they have not yet given a decided and definite answer still I believe they will all be parties to the same. I have this day sent out to each of them a copy of the enclosed draft and anticipate an early reply from them.

Yours very truly,

(sgd) JOHN F. COLBURN.

WITNESS RESUMES: There was also enclosed with the letter a draft of a proposed lease between the Holt heirs and Waialua. This draft was sent to the attorneys of the Waialua Company for their examination and consideration. I do not know

(Testimony of Mr. E. D. Tenney.)

where the draft now is. It was, however, the practice of the Waialua Company to keep all of the documents relating to its lands at the plantation. They were stored in a warehouse, which warehouse was destroyed by fire in 1931, such fire destroying the accumulated archives.

I knew Mr. Ashford. He was an attorney at law and a judge of this court. He is dead. I, myself, gave consideration to the terms of the proposed lease that had been suggested by Mr. Colburn, particularly to the period of the lease and of course to the rental asked and the other terms generally. I likewise gave consideration to the provisions of the lease having to do with improvements which were to revert at the expiration of the lease. I discussed the terms with my committee. Mr. Goodale was in favor of a longer term, if possible, to secure it, but the lease had been prepared and had been executed by the various parties and it was deemed best to accept the term of 25 years and authorize its execution. The committee would not have authorized the execution of the lease for a shorter term than 25 years.

No Cross-Examination.

CARLOS A. LONG

was called as a witness for Respondent, the oath being waived, and testified as follows:

Direct Examination.

I live in Honolulu and have lived here since 1874. I am an attorney at law and have practiced my profession for about twenty-two years. I knew John F. Colburn in his lifetime. He died ten or twelve years ago. He was my stepfather. I likewise knew Clarence Ashford in his lifetime. He died several years ago. He acted as my attorney and we were sometimes associated together in cases. I was appointed administrator of the estate of R. W. Holt, deceased, about December 1904, and I served for about three years. Mr. C. W. Ashford was my attorney as such administrator.

As administrator of the estate, I conducted its affairs, receiving the income, disbursing the same, having charge of the properties, and rendering accounts. I know the Holt Estate lands at Waialua and first became acquainted with them some twenty-five or thirty years ago. I knew W. W. Goodale and knew of the negotiations which commenced about the beginning of 1905, looking toward the leasing of the Holt lands to Waialua Agricultural Company. I initiated these negotiations together with Mr. Ashford and Mr. Colburn. Mr. Ashford represented me as my attorney. I participated in the subsequent negotiations which were had with Mr. Goodale, the manager of Waialua. In connection with such negotiations, I examined the prop-

(Testimony of Carlos A. Long.)

erty together with Mr. Colburn, Mr. Ashford, Mr. Goodale and Mr. James L. Holt. This was during the first part of 1905.

Right after I was appointed administrator of the Holt Estate in December 1904, we entered into negotiations with Waialua for the leasing of those lands. The Holt Estate at that time was not receiving enough rent, and these particular lands were idle lands, pasture lands, not being leased at all by anybody, so I believed it was to the best interest of the Holt Estate to have these lands leased or to get some revenue from them. That is the reason why I instructed Mr. Ashford and the rest of the parties in interest to see whether these lands could be rented. I do not think that the taxes upon the lands had been paid during the preceding few years.

The negotiations were principally had between Mr. Colburn and Mr. Ashford on our side, and with Mr. Goodale for Waialua. I recall that \$6,000 a year was to be paid over to me as administrator. Just prior to the execution of the lease I went over the lands with Messrs. Colburn, Ashford, Goodale, and James L. Holt, and they were covered with lantana, brush, and klu. None of the lands at that time were under cultivation and they were not producing any income. The terms of the lease to Waialua as finally executed were satisfactory to me as administrator. I myself, personally, delivered the lease to Mr. Goodale right on the land itself, I think in April of 1905. Mr. Ashford and Mr. Colburn were with me at the time of the delivery of

(Testimony of Carlos A. Long.)

the lease. During the time I was administrator of the Holt Estate I received all of the rentals that were due me under the terms of the lease as such administrator and accounted for those rentals through the court as such administrator.

No Cross-Examination.

GEORGE C. WATT

was called as a witness for Respondent, was sworn and testified as follows:

Direct Examination.

I reside at Kohala, Hawaii, at the present time. I was employed by the Waialua Agricultural Company from January 1899 to July 1906. For the first five and a half years I had charge of the Kawailoa division of the company, in charge of agricultural work, including improvements and supplying labor and material for construction. The Kawailoa section lies to the north of the Holt lands. After those first five and a half years I became head overseer at Waialua, doing exactly the same type of work except that it took in the whole plantation.

I became acquainted with the Holt lands in 1899. They were then lying idle, covered with very heavy lantana, with lots of stones in the lower end together with klu and other brush. On the upper part there was some scrub guavas. The lands did not show any signs of ever having been under

(Testimony of George C. Watt.)

cultivation. In 1905, as compared with their condition in 1899, there was no improvement. There might have been a little further growth of lantana, and in 1905 there was likewise no evidence of the lands ever having been cultivated.

In the early part of 1905 Mr. Goodale met me on the government road, stating that he had the lease to those lands and directing me to get in some men to take possession right away, which I did the same day. We cleared off all the lantana and all the stone, working on it every day until we cleaned the place up. For the first few days we were clearing by hand work, but later we got a machine that was invented for clearing lantana. We got that over and operated it between two steam plow engines. It had a very heavy roller and a heavy set of knives—a tremendous, big thing—but we used it and cleared the land I think very cheaply. This machine was used for the lantana and the other scrub stuff. Some of the stones were blasted out and some hauled out with steam plows. There were probably a hundred to two hundred men working on this job at various times.

I do not know the actual cost of clearing these lands but one day Mr. Goodale said the cost was a good deal, and he asked me my idea of the cost of clearing such land. I replied it would run not over \$35 or \$37 an acre. Before I left Waialua in July 1906 the stretch was cleared from the government road up to the Wahiawa extension ditch. The lands were not surveyed at that time but it was thought to be about 1400 or 1500 acres of cane land.

(Testimony of George C. Watt.)

When I left in 1906, the Wahiawa extension ditch had been built but there was no water in it. They were just then putting in one of the big siphons. I planted the first cane on the Holt lands in the latter part of 1905. We planted a piece of some 40 or 50 acres down near the lower end which would have been harvested in 1907.

The question of water was very unsatisfactory. We didn't have any regular water supply for that piece but we wanted to get in some cane. We dug a ditch and tried to get some water out of the gulch there, but it was very unsatisfactory. If we had heavy rains we had water, but in dry times no water at all. When I left in July that cane had not received sufficient water. When I left we had some railroad construction on a part of the Holt lands. The railroad work was started after we took possession in 1905. The labor employed in clearing the lands was mostly Japanese and Chinese, though we had some gangs of Portuguese and natives. This was all day labor, though the employees lived on the plantation, the laborers receiving from the plantation, without charge, their house, fuel, water and medical attention. This was an emolument received by them over and above cash payment.

The quality of the soil on the Holt Estate lands was very much the same as the adjoining lands. The lands above the Wahiawa ditch extension were considered useless for anything but a few cattle. There was no cultivation or clearing of the Holt lands above the Wahiawa extension ditch while I was in

(Testimony of George C. Watt.)

Waialua. The vegetation on the Holt lands was very heavy, there being a very heavy crop of lantana, especially on the lower lands. After you went up about half way, the lantana began to peter out a little bit. On the lower end there was nothing but one or two little trails. There were no roads. The lower end was very rocky, with lots of big rocks.

No Cross-Examination.

CARL BISCHOFF

was called as a witness for Respondent, was sworn, and testified as follows:

• Direct Examination.

I live at Waialua and am employed as a civil engineer for Waialua Agricultural Company, having been continuously in its employ since 1926. I received a B. S. Degree in Civil Engineering at the University of Maine and practiced it for a number of years prior to and since my graduation in 1926. I do all the company's civil engineering work, as well as the land surveying and anything pertaining to lands and leases. I am familiar generally with the properties and lands of the company. I have been familiar with the so-called Holt properties since early in 1928 and know the improvements located on that property, as well as the improvements and plants generally of the Waialua Com-

(Testimony of Carl Bischoff.)

pany located off the Holt property. I have prepared a map which was done from a map made and compiled by Mr. John Gomes Duarte in 1902 and then revised, and the cane fields and improvements are indicated thereon as of February 1, 1932.

(Respondent's Exhibit S-3, being the map referred to, was received in evidence without objection. This map is an original exhibit; a part of this record by order of the Supreme Court of Hawaii, a reduced reproduction being incorporated herein at the end of this volume.)

WITNESS RESUMES: The Holt lands are designated on the map, Exhibit S-3, by that area within the heavy green borders. The majority of the other lands shown on the map are owned or controlled by the Waialua Company except some few houses along the beaches and other small properties. The pink coloring on the map shows the land now available for pineapple culture. There are some portions of the pink coloring on the map that are not in cultivation in pineapples but would be available for pineapples as of February 1, 1932.

The red circle on the map to the west and south of the westerly tip of the Holt lands indicates the location of the Waialua Mill and is designated with the word "Mill." The directions on the map are indicated by the arrow which shows that the top of the map is approximately north, the left side of the map west, the right side of the map east, and the bottom approximately south.

The total area of land owned or controlled by Waialua, including land shown on the map and

(Testimony of Carl Bischoff.)

others not shown, is 49,063 acres, all contiguous or adjoining. This has been the area since 1928 when we purchased the Waimea Hui of over 5,000 acres, prior to that, for a number of years, the area being approximately 44,000 acres.

The total Holt estate area included within the green lines is 13,950.7 acres. The net area of sugar cane land within the Holt area, indicated in yellow, is 1537.77 acres. Using the gross area for the same, which includes roads, reservoirs and railroads, the total comes to 1622.95 acres.

The total net area of the Waialua Company's cane land is 9904 acres, which includes the Holt sugar cane area and which has been the approximate total area for a number of years last past. The Holt lands form about $15\frac{1}{2}\%$ of the total cane area of the Waialua Company, or something less than $1/6$. Of the pineapple lands owned or controlled by the company, the area in the Holt Estate lands is 6476.45 acres. That includes all the Holt Estate lands available for pineapple cultivation. The total area of the pineapple land now controlled by Waialua is 11,625 acres, so that the Holt Estate pineapple lands are about 55.7% of the company's pineapple lands. There has been no substantial change for the past ten years.

The map shows all physical features except telephone and telegraph lines. The roads are shown by a double black line; the railroads are a heavy black line with cross ties; the ditches are a double black line filled in with blue; siphons are a heavy dash line; reservoirs have their area enclosed in the black.

(Testimony of Carl Bischoff.)

line and they have the watered area colored in blue. The railroads, roadways, telephone and telegraph lines, canals, ditches and other improvements of a continuous nature, cross and re-cross the boundaries of the Holt lands without any regard to the boundaries as an obstacle. That is true, not only of railroads but of roadways, telephone wires, reservoirs, ditches and other physical improvements as shown on the map.

The Holt lands, for all physical and operating purposes, are considered and treated as an integral part of the Waialua Plantation. The sugar produced on the Waialua Plantation is hauled off on the plantation railroad to the mill and there crushed. The same cars and the same engines that are used over the entire plantation are used to haul the sugar on and off the Holt lands. Some of the labor working upon and cultivating the Holt lands live in camps on the Holt lands; others of the laborers come in for special jobs and from the outside, and from other lands outside of the Holt lands. Some of the laborers who live on the Holt lands work for the company off the Holt lands; in other words, the places of the laborers' residences does not control the place of their labor.

On the map, Exhibit S-3, the camps are denoted by small areas enclosed with black lines and the name of the camp printed near that area. On the map the improvements shown are now in existence as of February 1, 1932, and there are no improve-

(Testimony of Carl Bischoff.)

ments which are not in existence as of February 1, 1932.

I have also prepared another map indicating in a larger scale and with a more restricted total area, the so-called Holt Estate lands and the surrounding lands. This second map is likewise compiled and traced from a map made in 1902 by Mr. John Gomes Duarte, but compiled and revised up to date. The scale of the map is 1" to each 1,000 feet, with the exception of a little enlargement in the lower left-hand corner of the map, which is an enlargement of the southwest tip of the Holt Estate lands and small plots around the Helemanō stream.

(Respondent's Exhibit S-4, being the map referred to, was received in evidence without objection. This map is an original exhibit, a part of this record by order of the Supreme Court of Hawaii, a reduced reproduction being incorporated herein at the end of this volume.)

WITNESS RESUMES: I have indicated the Holt lands by a heavy green border around the outside of those lands. As in the other map, directions are shown by the arrow, north being at the top, east at the right, south at the bottom, and west on the left. On the extreme left of the map, as you face the map, a red circle with a black building inside it indicates the Waialua Mill.

The principal buildings of the plantation are located near the mill. The office is located near the mill, the skilled camp within a short radius of it, and a large number of laborers' camps are near

(Testimony of Carl Bischoff.)

the mill. Such laborers are skilled mechanics and perform work from time to time upon the Holt area.

The pink colored area shows the lands available for pineapple within the Holt lands. They are substantially devoted to pineapple cultivation, although certain of the areas are not presently in cultivation.

The yellow shaded area in the Holt lands indicates the part used for the cultivation of sugar cane. Cane roads are shown with a double black line; railroads with a heavy black line with cross ties; ditches a double black line filled in with blue; reservoirs, the flood area, filled in with blue; siphons by heavy dash lines; domestic water lines with light dash lines; transmission lines with a line superimposed with dots, camps are in an area enclosed in black, and the buildings within such area indicated in small squares.

I have on this map shown improvements which were not actually in existence on February 1, 1932. These I have marked "Retired", with the date of such retirement in years, so that from the face of the map, Exhibit S-4, all of the improvements in existence on February 1, 1932, can be seen, and the improvements erected and abandoned prior to that date are similarly shown.

The Wahiawa reservoir is the main mountain water supply of the plantation. The dam is located just below the junction of the north and south forks of the Kaukonahua gulch, and the reservoir fills a great area in such north and south forks just below

(Testimony of Carl Bischoff.)

Schofield Barracks. The Wahiawa dam is located at the bottom and center of the map, Exhibit S-4, and the reservoir itself extends to the north-east, and to the south-east far below the bottom of the map. The approximate area of the Wahiawa reservoir is 300 acres and when the dam is filled to capacity there is impounded about 2,500,000,000 gallons at the spillway height. A small area of the flooded area of the reservoir is located on the Holt Estate lands on the north fork of Kaukonahua gulch in Grant 973, which is on the south center of the map.

The waters of the Wahiawa reservoir are carried to the plantation fields by a system of tunnels from the Wahiawa reservoir to Kemoo field, known as the Wahiawa reservoir ditch. That ditch is shown on the map extending from the Wahiawa reservoir dam in a northwesterly direction and is so designated on the map. The Waialua Agricultural Company owns this Wahiawa reservoir ditch. The ditch consists of a few hundred feet of open ditch with some four miles of tunnels.

The Wahiawa extension ditch takes the water from the Wahiawa reservoir ditch and carries it laterally across the plantation in a northeasterly direction at an elevation of about 700 to 750 feet. The approximate length of the Wahiawa extension ditch is about 22,000 feet, about half of it, or 11,000 feet, being located upon the Holt lands. This ditch consists solely of an open ditch with a few flumes and siphons carrying it over gulches.

(Testimony of Carl Bischoff.)

The ditch passes through property owned and controlled by Waialua, first at the outlet of the Wahiawa reservoir ditch known as Kemoo fields, through Kaukonahua gulch, by a 54" siphon, through the fields of Kaheeka, into the lands of the Holt Estate, and beyond into the Kawailoa lands to the north, commonly known as the Bishop Estate lands.

The waters of the Wahiawa reservoir are used to irrigate lands in Kemoo, the ranch section, a number of the Helemano fields not in the Holt lands, and portions of Opaeula fields and Kawailoa fields to the north of the Holt lands; in other words, the Wahiawa water serves lands lying south of the Holt lands, the Holt lands themselves, and lands lying north of the Holt lands. The waters of the Wahiawa reservoir system are used indiscriminately on all of those lands—sometimes on one land and sometimes on another land.

There are a number of sources of the water supply used in the irrigation of the Holt Estate lands. The major one might be called the water from the Wahiawa dam, carried along through the Wahiawa extension ditch as described. Another system of mountain waters affecting the Helemano and Poamoho streams is the water developing in lands on the upper edge of the Holt Estate lands originating on lands belonging to the Territory and lands of the Bishop Estate under lease to Waialua. This is carried through the Helemano and the Poamoho branch ditches into the Helemano ditch, through the Holt Estate pineapple lands. Some of the water is

(Testimony of Carl Bischoff.)

stored in a small reservoir along the line and it ultimately empties into the Wahiawa extension ditch where it intermingles with water from the Wahiawa reservoir, some passing into the land of the Holt Estate and some passing on into the land of the Bishop Estate to the north.

When the mountain water is insufficient from those two sources, namely, the Territory and Bishop Estate lands referred to, and the Wahiawa reservoir, it is supplemented by water from pumps, the major pump being Pump No. 10, known as the Poamoho pump, located on Holt Estate land on a small piece to the west and south of the major portion of the Holt Estate lands. It is located at Grant 235, which is the small green bordered area directly to the south of the extreme westerly end of the larger Holt area as shown on the map, Exhibit S-4. This water is pumped on to the Holt Estate lands and other lands.

The waters required for the irrigation of the Holt lands come from two sources, namely, gravity water, and, as to part of the Holt lands, pump water. The sources of the gravity water may be described generally as the Wahiawa reservoir system and water from the lands above and to the east of the Holt Estate lands but under lease to Waialua. All of these waters are mingled and used indiscriminately either on the Holt lands or upon other lands of the Waialua plantation and such has been the fact for many years.

(Testimony of Carl Bischoff.)

The water originating in the Bishop Estate and the Territorial or school lands to the east of the Holt lands are gathered up by two intakes: one intake in the Helemano stream just west of the east or upper boundary of the Holt Estate lands, and another intake in the Poamoho stream near such east boundary. These waters are carried into the upper Helemano ditch from where they are dropped into the upper Helemano reservoir or carried above the Helemano reservoir down through the pineapple fields where the upper Helemano reservoir ditch and the Helemano ditch join and go into the Wahiawa extension ditch. Some of this water from the Helemano and Poamoho ditches can be put into the Helemano 6 reservoir. This reservoir is open to the Wahiawa extension ditch. It has its outlet below the Wahiawa extension ditch and the water can go into the lands below the extension ditch. The waters from the Wahiawa extension and from the Helemano system thus both find their way into Helemano 6 reservoir and the waters which flow out of Helemano 6 reservoir may have had their origin either in the Wahiawa or in the Helemano system. About 523 acres of Holt Estate cane area can be irrigated from the waters of the Poamoho pump, being the area below the 380-foot ditch, which is designated on the map as the "High Lift Ditch." Some 500 acres of other lands that lie to the south and southwest of the Holt area can be irrigated by this pump.

(Testimony of Carl Bischoff.)

The Poamoho pump is used when there is an insufficient supply of mountain water to irrigate the lands below the high lift ditch elevation; whenever there is gravity or **Wahiawa water available in** sufficient quantities, the pump is not used. The water from this pump is pumped from the pump with two lifts: the high lift pump, which pumps through a 30" diameter, rivetted steel pipeline to an elevation of 380 feet where it is carried laterally in a ditch in a northerly direction, and also through several siphons, into Kaheeka land and through the Holt Estate lands; the low lift ditch water from this pump is carried through a 24" diameter pipe, through several siphons laterally in a northerly direction into the Holt Estate lands at an elevation of 190 feet.

The high lift waters from the pump may be stored in any of three reservoirs: the Kaheeka reservoir, the Helemano 4-C reservoir (which is near the south boundary of the Holt Estate lands) and the Helemano 9-C reservoir across the Helemano gulch. The Kaheeka reservoir is not located upon the Holt lands. About ~~half~~ of the ditch system mentioned in connection with the Poamoho pump is off the Holt lands. There are lands other than the Holt lands irrigated from the ditches just mentioned, and some of the water which is stored in the Helemano 4-C reservoir located on the Holt land is used on areas off the Holt land. There is no distinction made in the use of the Poamoho water for irrigation purposes upon the Holt lands and any other lands of the Waialua Company.

(Testimony of Carl Bischoff.)

If one went out onto Holt lands to a certain spot it would be difficult to tell from what sources that water originated, and, especially in what quantities it came. It might be mingled water, or from one source or the other. The same is true if you went over to the Bishop Estate cane land north of the Holt lands. It would be difficult to originate the source of water there unless some of the mountain systems were entirely dried up. Water on the Bishop Estate lands might be from the Helemano system, from the Wahiawa system, or from both. In other words, all of this water is used indiscriminately upon all of the lands subject to irrigation from these sources.

During the harvesting season when we are grinding cane, the greater portion of the electricity used in the Poamoho pump comes from that generated in the mill power plant. It is supplemented at times by power from a hydro-electric plant located at Kemoo power plant, indicated on the map and just below the outlet of the Wahiawa reservoir ditch. During the off season the major part of the electricity which supplies the Poamoho pump is purchased from the Hawaiian Electric Company. The Kemoo power plant cannot supply the whole of the Poamoho pump. It could supply one of the pumps but it supplements the power from the mill at times.

The Waialua Company has an extensive system of transmission and distribution lines for electricity. the source of the power coming from the Waialua mill: the Kemoo power plant and the Hawaiian

(Testimony of Carl Bischoff.)

Electric Company, so that a particular kilowatt may have had its origin in any one of these three sources.

There is a small area to the west of the major portion of the Holt lands which is irrigated by Pump No. 7. That pump is located near the junction of the Kaukonahua and Poamoho streams at the site of the old Waialua mill. Pump No. 7 is located off the Holt lands but the water it supplies is in part used for the irrigation of Holt lands and other lands, no distinction being made between the Holt areas and the other areas irrigated by it.

Cross Examination.

The area marked in pink on Exhibit S-3 does not represent all of the lands of the Waialua Company available for pineapples. The figures given are correct, although there are other parts not shown on Exhibit S-3. This exhibit, however, does show the pineapple lands on the Holt Estate lands.

The roadways indicated on the map are all roadways which were made by the Waialua Company. There are numerous other roadways not shown on the map which were made by the Hawaiian Pineapple Company or pineapple lessees. All of the improvements indicated on the small map, Exhibit S-3, are likewise indicated on the larger map, Exhibit S-4, so far as they relate to Holt Estate lands, except that Exhibit S-4 also shows certain improvements which have been abandoned.

As to ditches, where the two black lines are marked with blue in between, that is the ordinary

(Testimony of Carl Bischoff.)

ditch dug in the ground, but where the lines are double dash lines, filled in with blue, it denotes tunnels, and tunnels are a great deal more expensive than open ditch. Some cement structures in the ditch system are not shown in detail.

Where I use the words "Upper Helemano Ditch 1908", on Exhibit S-4, for instance, it indicates the date when that ditch was completed and put in operation. The same is true of dates of railroads and various other dates. Abandoned improvements carry the word "Retired". The railroad labeled "C. R. & L. Railroad" is not a Waialua improvement.

The lands north of the Holt lands have small mountain water supplies but they are insufficient to water the area. These northerly or Kawailoa lands also have a ditch system coming from the Bishop Estate lease so they are not entirely dependent on the Wahiawa or Helemano systems. There are no sources of water supply for the lands south of the Holt Estate lands other than those already indicated.

Re-direct Examination.

Approximately 1/3 of the waters impounded in the Wahiawa reservoir are used in the lands north of the Holt area, approximately 1/3 on the Holt area and 1/3 on the lands lying south of the Holt area. While none of the ditches mentioned have substantial portions lined with concrete or cut stone, nevertheless there are such portions which, lined in that manner, are costly.

(Testimony of Carl Bischoff.)

Re-cross Examination.

My basis for the statement that the Wahiawa Water is divided about into thirds is because the areas correspond to about thirds. In exceptional times no Wahiawa reservoir water might be needed on the Holt or Bishop Estate lands, and at that time we cut down our supply from Wahiawa in order to keep the level of the reservoir higher, in order to assure our supply in dry weather. If the two local systems, namely, the Heleman system and the system on the Bishop Estate lands, have no water, then all the water for irrigation on such lands would come from Wahiawa. There are also occasions when neither Wahiawa nor Holt waters are available and you use all pump waters on the area that is below the pump level. We use water from one source or another, either Wahiawa, mountain, or pump, depending on what water is generally available, without making a distinction. There are, however, very few days we do not draw from the Wahiawa reservoir, throughout the whole year. These occasions are generally when we have a great amount of rain locally, and then we do not need even mountain water supplies.

MR. BISCHOFF

being recalled for further examination, testified on

Direct Examination

as follows:

My answer that the pineapple area owned or controlled by Waialua has been substantially the same for a number of years last past, is an error on two

(Testimony of Carl Bischoff.)

points: In January of 1929 we sold 283 acres of pineapple lands to the government, and in April of 1930 the Richardson Estate lease expired, which included an area of 239.87 acres of pineapple lands. There may have been a few minor small changes also. The date of the fire at Waialua, in which plantation records were destroyed, was August 2, 1930.

Cross Examination.

The 283.51 acres sold in January 1929 were pineapple lands not a part of the Holt lands. What I refer to as the Richardson Estate lease expired on April 1, 1930, this being an undivided interest in the Holt area. The lease on the Richardson area has not been renewed at this time by the Waialua Agricultural Company but I think it is renewed to the Hawaiian Pineapple Company, the lessee under the lease of January 10, 1923 (Exhibit Ac. B-1).

L. N. MACKOMISKEY

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

I live in Honolulu and am an accountant, working almost entirely with reference to income taxes. I have done analytical accounting for a number of years and have worked on accounting for the Treasury Department and for my present employers, namely, Castle & Cooke, Limited, and T. H. Davies & Company, for approximately twenty years. I am familiar with the accounts, books and records of the

RESPONDENT'S EXHIBIT S-5.
STATEMENT SHOWING COST OF IMPROVEMENTS MADE

Description	From Apr. 1, 1905 to May 2, 1910	From May 2, 1910 to Apr. 10, 1922	From Apr. 10, 1922 to Apr. 5, 1928	Total
	May 2, 1910	Apr. 10, 1922	Apr. 5, 1928	
Buildings (including Domestic Water System)	\$ 19,775.58	\$ 35,928.67	\$ 1,873.79	\$ 57,578.04
Railroads	32,758.02	50,006.92	382.90	83,147.84
Reservoirs				
Helemano 4 "A" Domestic	243.00	_____	_____	243.00
Helemano 3	2,299.70	_____	_____	2,299.70
Helemano 6	5,354.15	_____	1,274.95	6,629.10
Helemano 6 "B"	_____	2,494.36	_____	2,494.36
Helemano 11	_____	5,455.07	_____	5,455.07
Helemano Upper	47.00	20,007.21	_____	20,054.21
Helemano 12	_____	3,186.25	790.60	3,976.85
Helemano 4 "A"	_____	2,915.30	_____	2,915.30
Helemano 9 "C"	_____	2,783.10	_____	2,783.10
Helemano 15	_____	8,080.70	179.00	8,259.70
Helemano Upper	_____	16,025.36	_____	16,025.36
Telephones				
Helemano 54 inch	16,098.49	239.25	3,247.71	19,585.45
Opaeula 54 inch	4,869.98	235.50	259.12	5,364.60
Helemano 6	_____	5,969.22	_____	5,969.22
Helemano 6 New	_____	_____	_____	_____
Helemano Reservoir 11	_____	_____	_____	_____
Ditches				
Wahiawa Extension	5,799.16	_____	_____	5,799.16
Helemano—Poamoho Branch	8,835.65	_____	_____	8,835.65
Helemano Upper	22,708.35	7,072.00	3,087.00	32,868.00
Helemano Lower	7,022.70	_____	_____	7,022.70
Helemano Upper Reservoir Outlet	_____	2,465.10	2,230.20	4,695.30
Waterways (including Lining Ditches)	5,306.46	18,233.40	4,059.77	27,599.63
Roads, Bridges and Fences	3,520.85	3,320.65	3,254.04	10,095.54
Flumes	169.60	3,619.10	4,389.82	8,178.52
Camp Sewerage	_____	762.50	_____	762.50
Drainage Ditches	_____	173.00	55.00	228.00
Electric Plant	_____	_____	4,415.75	4,415.75
Development of Upper Lands	2,121.70	1,130.05	_____	3,251.75
Cane Flumes	1,381.20	8,935.65	2,000.00	12,316.85
Telephone Lines	719.60	796.67	_____	1,516.27
Clearing Lands	43,493.89	3,678.40	311.60	47,483.89
Pump No. 10 (Poamoho)				
Building	_____	_____	900.97	900.97
Machinery, etc.	_____	_____	164,409.62	164,409.62
Wells	_____	_____	42,860.52	42,860.52
Pump No. 10 "A"—Domestic	_____	_____	4,700.56	4,700.56
TOTAL	\$182,525.07	\$203,513.43	\$244,683.62	\$630,722.12

BIT S-5.

1901

NTS MADE ON HOLT LANDS

Total	From Apr. 5, 1928 to Mar. 31, 1930	Total	From Mar. 31, 1930 to Dec. 31, 1931	Total
\$ 57,578.04		\$ 57,578.04		\$ 57,978.04
83,147.00	\$ 496.94	83,644.78	\$ 400.00	86,880.17
243.00		243.00		243.00
2,299.70		2,299.70		2,299.70
6,629.10		6,629.10		6,629.10
2,494.36		2,494.36		2,494.36
5,455.07		5,455.07		5,455.07
20,054.21		20,054.21		20,054.21
3,976.85		3,976.85		3,976.85
2,915.30		2,915.30		2,915.30
2,783.10		2,783.10		2,783.10
8,259.70		8,258.70		8,259.70
16,025.36		16,025.36		16,025.36
19,585.45	473.61	20,059.06		20,059.06
5,364.60		5,364.60		5,364.60
5,969.22		5,969.22		5,969.22
	5,191.21	5,191.21		5,191.21
	505.55	505.55		505.55
5,799.16		5,799.16		5,799.16
8,835.65		8,835.65		8,835.65
32,868.05		32,868.05		32,868.05
7,022.70		7,022.70		7,022.70
4,695.30		4,695.30		4,695.30
27,599.62	1,608.11	29,207.73		29,207.73
10,095.54	469.24	10,564.78		10,564.78
8,178.52		8,178.52	3,363.35	11,541.87
762.50		762.50		762.50
228.00		228.00		228.00
4,415.78		4,415.75	307.95	4,723.70
3,251.75		3,251.75		3,251.75
12,316.85		12,316.85		12,316.85
1,516.27		1,516.27		1,516.27
47,483.89		47,483.89		47,483.89
900.97		900.97		900.97
164,409.62	132.00	164,541.62		164,541.62
42,860.52		42,860.52		42,860.52
4,700.56		4,700.56		4,700.56
\$30,723.12	\$ 8,876.66	\$639,598.78	\$ 7,306.69	\$646,905.47

(Testimony of L. N. Mackomiskey.)

Waialua Agricultural Company, Limited, and have been familiar with them since about 1918. I have, with assistance, prepared at the request of the attorneys for the Waialua Agricultural Company, a statement showing the cost of improvements made by the Company on the Holt lands for the period beginning April 1, 1905, to December 31, 1931, segregated by various periods and according to various descriptions of improvements. This statement is from the original books of record of the company, supplemented by contemporaneous analyses of accounts made by the company.

(Respondent's Exhibit S-5 was received in evidence over objection and reads as follows:

[See adjoining pages 1507-1508.]

WITNESS RESÜMES: Exhibit S-5 shows all of the capitalized improvements put upon the Holt lands by the Waialua Agricultural Company. It does not include the cost of repairs, maintenance, etc., which was not capitalized by the company. It is divided into periods: from April 1, 1905, to May 2, 1910; from May 2, 1910, to April 10, 1922; from April 10, 1922, to April 5, 1928, with the total of the three periods to that time; also from April 5, 1928, to March 31, 1931, and the total to that time; and the further period from March 31, 1931, to December 31, 1931; with a grand total covering all periods. It is also subdivided into various larger accounts of the company, namely, Buildings, Railroads, Reservoirs, Siphons, Ditches, Waterways, Roads, Bridges and Fences, Flumes, Cane Sewerage, Drainage Ditches, Electric Plant Development of Upper Land, Cane Flumes, Telephone Lines, Clearing Lands, Pump No. 10, Pump No. 10-A. The

(Testimony of L. N. Mackoiniskey.)

various column headings showing the periods between various dates were supplied by counsel.

The accounts include a portion only of "Indirect Costs." They include cost of supervision but not, for instance, interest during construction. I am sure they include engineering. From the methods of accounting of the plantation, they would include any damage done incidentally during construction, like accidental death of workmen, which had to be paid up, and any damage resulting from the work while it was in course of construction. They likewise include a portion of indirect costs of laborers. There are some indirect costs which are not shown as part of the costs of improvements, such as medical attendance to employees, the value of quarters furnished employees, firewood, and some similar items. The statement includes the cost as just explained of all improvements erected upon the Holt lands from April 1, 1905 to December 31, 1931.

I have likewise prepared a statement showing the cost of improvements made on the Holt lands which have been abandoned for the same period, namely, April 1, 1905, to December 31, 1931. The information as to the items of improvements which have been abandoned was made up upon the advice and with the consultation of Mr. Duarte who is familiar with the physical units of improvements. The costs of these units which, on his information, had been abandoned was traced to the original books of record of the company and the contemporary analyses of accounts made up at the same time.

Respondent's Exhibit S-6

was, over the objection of counsel for Petitioner, received in evidence and reads as follows:

Testimony of L. N. Mackomiskey.)

Description	Year Con- structed	Year Aban- doned	Cost	Total
Buildings. (including Domestic Water System)				
Helemano 8 Camp	1907	1931	\$3,465.80	
Helemano 8 Camp	1908	1931	1,073.40	
Helemano 8 Camp	1909	1931	21.75	
Helemano 8 Camp	1916	1931	92.65	
Helemano 8 Camp	1919	1931	87.00	
Wilson's Helemano Camp	1908	1909	150.00	
Wahiawa Ditch Camp	1911	1923	896.20	
Helemano 14 Camp	1913	1923	1,754.10	
Helemano 14 Camp	1917	1923	3,639.45	
Helemano 13 Camp.	1917	1923	115.00	
Helemano 13 "A" Camp	1919	1923	366.90	
Helemano 3 Camp-Store	1908	1927	726.00	
Helemano 4 Camp	1906	1930	780.00	
Domestic Water System	1917	1924	7,880.60	\$21,048.85
Railroads				
Helemano 4	1906	1929	8,000.00	
Helemano 4 "B"	1906	1930	1,975.00	
Helemano—12-13-14	1915	1923	5,932.40	
Helemano—14-15-16-17	1917	1923	3,226.60	
Poamoho Spur	1916	1929	1,546.00	20,680.00

(Testimony of L. N. Mackomiskey.)

Description	Year Con- structed	Year Aban- doned	Cost	Total
Siphons				
Helemano 6	1918	1925		5,969.22
Ditches				
Helemano Lower	1906	1915		7,922.70
Waterways				
Helemano 14	1914	1923	42.60	
Helemano 13	1915	1923	64.30	
Helemano 13-13A-14B	1917	1923	189.10	
Helemano 14-14A	1918	1923	26.00	
Helemano 14	1919	1923	83.70	
Helemano 12-13A-13B-14B	1920	1923	408.90	
Helemano 6 Siphon Outlet Kenoo Ditch Extension	1920	1929	353.50	1,168.10
Flumes				
Helemano 13	1911	1923	83.90	
Helemano 11 Outlet Ditch	1911	1929	726.45	
Helemano	1911	1913	2,852.40	
Helemano	1912	1913	22.00	3,684.75
Cane Flumes				
Helemano—Various Fields	1908	1929	222.75	
Helemano—Various Fields	1909	1929	773.45	
Helemano—Various Fields	1910	1929	1,143.50	

(Testimony of L. N. Mackomiskey.)

Description	Year Com- structed	Year Aban- doned	Cost	Total
Helemano—Various Fields	1912	1929	691.50	
Helemano—Various Fields	1913	1929	•1,407.40	
Helemano—Various Fields	1914	1929	1,337.70	
Helemano—Various Fields	1915	1929	452.65	
Helemano—Various Fields	1916	1929	1,215.00	
Helemano—Various Fields	1917	1929	1,304.00	
Helemano—Various Fields	1918	1929	1,384.00	
Helemano—Various Fields	1921	1929	404.90	
Helemano—Various Fields	1926	1929	2,000.00	12,316.85
Poamoho				
Telephone Lines				
Helemano (Lord)	1906	1925	26.65	
Helemano Extension	1908	1925	688.95	
Helemano Extension	1909	1925	4.00	
Helemano Upper Reservoir Extension	1915	1925	769.50	1,516.27
Helemano Policeman's House	1919	1925	27.17	
				73,406.74
Reservoirs				
•Helemano Upper	1914	1917		20,054.21
				\$93,460.95

•Failed in 1917 Replaced 1918)

(Testimony of L. N. Mackomiskey.)

WITNESS RESUMES: Exhibit S-6 is made up of units similarly to Exhibit S-5, previously discussed. It shows the year of construction of each unit, each item, the year abandoned and the cost of the item abandoned, so that the total, appearing at the bottom of the Exhibit, namely \$93,460.95, represents the original cost of those improvements upon Exhibit S-5 which have been abandoned up to and including December 31, 1931. The total cost of improvements now located on the Holt property may be determined by subtracting from the total shown on Exhibit S-5, namely \$646,905.47, the total appearing at the bottom of Exhibit S-6, \$93,460.95.

I have also prepared a statement showing the cost of the Wahiawa Water Company outlet and spillway to December 31, 1931. This is prepared directly from the original books of record of the company at the Wahiawa office.

(Respondent's Exhibit S-7 was, over the objection of counsel for Petitioner, received in evidence and reads as follows:

(Testimony of L. N. Mackomiskey.)

COST OF WAHIAWA WATER COMPANY, LIMITED.
DAM AND SPILLWAY TO
DECEMBER 31, 1931.

Year	Dam	Spillway	Total
1902)			
1903)	\$ 24,079.72		\$ 24,079.72
1904)			
1905	49,817.48		49,817.48
1906	170,001.14		170,001.14
1907	3,794.48		3,794.48
1916	39.38		39.38
1917	25.00		25.00
1921		\$180,000.00	180,000.00
1924		867.23	867.23
1931	19,931.51		19,931.51
	\$267,688.71	\$180,867.23	\$448,555.94)

WITNESS RESUMES: The exhibit shows the amounts, year by year expended from 1902 to 1931, on the dam and on the spillway, separately, and the total of the two items, except for the years 1902 to 1904, inclusive, which are combined in one item.

I prepared, also, a statement showing the cost of the Wahiawa Ditch and the Wahiawa Extension Ditch from the outlet valve at the Wahiawa Dam to the boundary of the Holt Estate lands, up to December 31, 1931. This was likewise prepared from the original books.

(Respondent's Exhibit S-8 was, over the objection of counsel for Petitioner, received in evidence and reads as follows:

(Testimony of L. N. Mackomiskey.)

**COST OF WAHIAWA DITCH AND WAHIAWA DITCH
EXTENSION FROM OUTLET VALVE AT WAHIAWA
DAM TO BOUNDARY OF HOLT LANDS TO DECEM-
BER 31, 1931:**

Year	Wahiawa Ditch	Wahiawa Ditch Extension	Total
1904	\$13,328.21		\$13,328.21
1905	25,415.50	\$4,394.68	29,810.18
1906	10,433.88	1,404.49	11,838.37
1907	323.05		323.05
1912	927.20		927.20
1915	318.90		318.90
1916	71.00		71.00
1917	84.30		84.30
1918	767.80		767.80
1919	355.00		355.00
1920	1,068.90		1,068.90
1923	109.00		109.00
1924	4,892.67		4,892.67
1925	13.00		13.00
1926	132.00		132.00
1927	115.90		115.90
1928	925.02		925.02
1930	958.63		958.63
	<hr/> \$60,239.96	<hr/> \$5,799.17	<hr/> \$66,039.13

WITNESS RESUMES: Exhibit S-8 shows the capitalized cost of the Wahiawa Ditch and the Wahiawa Ditch Extension from the outlet valve at the Wahiawa Dam to the boundary of the Holt lands, year by year from 1904 to 1930, showing the expenditures on the two items of improvements separately, and also the total of the two combined, combined annually and combined as a grand total for the whole period. The statement includes no item that has been charged to expense and only

(Testimony of L. N. Mackoniskey.)

items which have been charged to capital. Each and every one of the items indicates cash expenditures as shown in the books of records of the company. I analyzed these accounts myself and gave attention to the fact whether they were capital accounts, but I did not in any way segregate the Wahiawa Dam Spillway account or Ditch account in connection with any pro rata effect of these two items upon the Holt lands as distinguished from other parts. The only proration shown is the proration of the cost of the Wahiawa ditch extension as between the portion on the other Waialua land and the portion of the Holt land. On information from Mr. Duarte it was divided equally. The length of the Wahiawa ditch extension is about 50% on the fee lands of Waialua and 50% on the Holt lands. The nature of the land and cost of construction is stated by Mr. Duarte to be just about the same, so the apportionment of the cost from the lower part of the Wahiawa ditch to the end of the Wahiawa ditch extension is shown as 50% expended on fee and 50% on the Holt land, and this portion shown on Exhibit S-8 is 50% of the total amount. This is the only proration we had to make on these.

Cross Examination.

Referring to Exhibit S-5, and to Exhibit S-6, the dates of abandonment were ascertainable in most cases by reason of some definite occurrence; in some cases by an accounting record. This would be par-

(Testimony of L. N. Mackomiskey.)

ticularly true since 1926, for the reason that the company's plant ledger was established at that time. In other instances I gathered my information from the people at the plantation itself and from Mr. Duarte. The various accounts themselves are being carried in the exhibits at capital cost.

Exhibit S-5 does not pretend to show present value, as depreciation is not included. On buildings of these lighter types, the depreciation taken is 4% or 5%. In past accounting history of the company a great deal lower rate of depreciation was taken for the reason that, under the then system of accounting, buildings were repaired very largely through repair and maintenance accounts. Buildings of this type can be maintained almost at 100%. Through repairs and replacements, new roofs are to be put on, new sidings, new painting, etc., and new foundations, so buildings run along almost continuously. At the present time we capitalize a greater percent of improvements.

The cost of maintenance and repair will not equal or exceed the original cost of construction in any one year, but if you take a building—an ordinary laborer's shack as there is on the plantation—put a new roof on one year, a new floor in another year, etc., there might come a time when such costs would amount to the original cost of the building. You cannot talk of a fair rate of depreciation without due consideration for the repair and maintenance policy. A laborer's quarters, on which 5% might

(Testimony of L. N. Mackomiskey.)

be considered a fair rate of depreciation, might conceivably last forty or fifty years, or even longer, depending on the repair and maintenance policy. For practical accounting purposes, some rate has to be taken.

I have made no attempt to determine the physical condition of the improvements, and a survey of the improvements would have to be made to determine to what extent maintenance and repairs had overcome normal wear and tear. This schedule purports to be only a statement of costs, of capitalized improvements that were put on the property, and with no indication of present worth. Likewise, there is no indication as to how far the present physical condition may be the result of outlay in the course of repairs and maintenance as distinguished from initial capital invested. On this particular Exhibit S-5 no depreciation is carried against the improvements.

In certain classes of assets there has been an improvement in the condition of the asset as compared with its original installation, like railroad cuts and fills. They improve in time and there has also been an element of betterment that has entered into these improvements through repairs and maintenance, substituting a stronger or better character than was in the original installment, like railroad rails and ties. The bed of a railroad as a whole is not ordinarily depreciated at all because as ties and rails wear out new ones are put in and the road is main-

(Testimony of L. N. Mackomiskey.)

tained in a quite serviceable condition. So, also, with respect to reservoirs in which the reservoir sides have become settled and strengthened. I am merely pointing out that some of the assets have not depreciated at all but are better. I should think that a considerable part of the physical condition of the assets today is a result of the maintenance and upkeep which has been exercised throughout all these years.

Enlargement of buildings would be capitalized. If a one-room building was enlarged into a three- or four-room building the cost would be reflected in the increased capital expenditure, but if there were simply a replacement of something that had previously existed it would not appear in that statement. All my information in regard to the items comes from the accounts of the company. It was customary to have an analysis made of the expenditures month by month and year by year, which analysis is on record at the plantation, which definitely shows the location of these improvements which were put on the property. It would show all fields and all camps and all sections, so that the accounts there definitely and specifically show the location of the improvements that have been put on.

The subsidiary records show, in practically all instances, the difference between capital outlay and operating expense. It would be difficult to take every particular improvement, each particular item, and trace that improvement down to its place in

(Testimony of L. N. Mackomiskey.)

the improvements today. It could not be done with the accuracy with which the schedule, Exhibit S-5, is compiled, for the reason that some of these items have become merged into group items and carried in these accounts as a group instead of a single item. Take the extension of the railroad, for example. We would know what that extension would cost from a fixed point to another fixed point, which was usually noted in the book when the expenditure was made, but after it has become set up in the books it becomes merged with other railroad accounts and it loses its identity to some extent. That would confuse us in picking out items at the present time. Some of these large units, however, like large siphons and reservoirs, do still remain on the books and carry a different account in themselves.

In the item "Clearing Lands," \$43,493.89, there would be an item in the ledger account of which that would be a part. In my experience as an accountant, and knowledge generally of bookkeeping methods among sugar plantations in Hawaii, the initial cost of clearing lands is carried as a capital asset indefinitely, and properly so. This represents the cost of the land in its present condition. If someone else had done the clearing and sold the land to you it would be reflected in the added cost you would have to pay for it.

Between the period April 1, 1905, to May 2, 1910, there were some amortization charges on some of the items, and the books would reflect the charges.

(Testimony of L. N. Mackomiskey.)

After May 2, 1910, and for the succeeding years, could not say positively just what the practice was on the books. There was a period up to which amortization was taken and thereafter discontinued, but I do not know what that date was, as I have made no effort to determine the amount of amortization. Amortization and depreciation are entirely different in their nature. Some improvements do not depreciate, such as reservoirs, railroad road beds, tunnels, and other improvements more or less permanent in their nature. If anything was taken there it would be amortization, but I cannot say that was taken, but from my best recollection and from what I have seen of the books and accounts, there was only one rate of amortization. An amortization charge represents the equity of spreading the cost of improvements over the period for which the lessee would have their use. This is a constant rate, varying only as additional improvements were put on the land.

Exhibit S-5 represents only that portion of the cost of improvements that actually were on the Holt lands and does not include any incidental cost such as connecting the railroad system with one over the Holt lands or other areas. This could be done because in practically all instances the cost of the proportion of improvements on the Holt land was separately shown on the account. In a very few instances it was necessary to apportion the cost of improvement which was partly on Holt land and

(Testimony of L. N. Mackomiskey.)

partly on other lands, but there were only a very few cases of that kind and the percentage was negligible. When such apportionment was made it was done on the advice of Mr. Duarte who was there at the time and had first-hand knowledge of the work that was done, as, for instance, in the case of the Wahiawa ditch extension. Generally, the apportionment was made by the plantation contemporaneously with the construction, in order to set up the items properly in the books.

Since 1910, the improvement accounts in respect to the Holt lands are shown separately, either by books or subsidiary temporary exhibits which were available to me. I believe the accounts can be shown up to the present time as having been put on the Holt lands or other lands, but the larger accounts may merge the expenditures. Exhibit S-5 shows the actual cost of an improvement where physically located without regard to its use and without regard to what part of the company's business it served; for instance, if there is a ditch on the Holt lands, with no purpose except serving the land beyond the Holt land, it would be carried in the exhibit as a Holt improvement.

In regard to Exhibit S-7, relating to the Wahiawa Water Company, I obtained my information from the books of the Wahiawa Water Company, as such figures were not shown on the books of the Waialua Company. I am generally familiar with the stock holding of the Wahiawa Water Company. Waialua

(Testimony of L. N. Mackomiskey.)

at all times held control. I couldn't say, definitely, just what outside holdings there were but they have all practically been sold to the Waialua Company.

Waialua pays the Wahiawa Water Company for the use of water coming from the Wahiawa water system. The accounts of the company are kept separate and distinct. The transactions between the Wahiawa Water Company and Waialua are not quite the same as would be between two independent corporations, because Waialua owns 100% of the stock of the Wahiawa Company. The charge that is made is, I presume, agreed upon between the two corporations. If there were any dividends from the Wahiawa Water Company, of course Waialua would get its proportion. I think the practical working out has been that water is sold at about cost, including the various items of cost which might arise over a period of years.

The Wahiawa Dam is entirely off the Holt property, except a comparatively small area into which a part of the waters at its higher levels might be backed up from the dam. The spillway is that portion of the dam or that portion adjoining the dam which provides for carrying away the surplus waters of the reservoir.

I am not competent to segregate the costs of the books of the Wahiawa Company by its various assets. It is not my understanding, however, that the dam of itself, or the spillway of itself, takes in any more than the classified units as signified by

(Testimony of L. N. Mackomiskey.)

the name. In connection with the Wahiawa Water Company, of course there are a number of features and a long list of improvements and things connected with water development not connected with the Holt lands which are not shown at all on Exhibit S-7, they being, in the main, outlets and ditches used in supplying the homesteaders with domestic and irrigation waters, a minor detail of the company's operations. There would be no depreciation on the Wahiawa Dam. The expenditure for the Wahiawa ditch and the Wahiawa ditch extension, from the outlet valve at the Wahiawa dam to the boundary of the Holt lands as shown in Exhibit S-8, is an expenditure of the Waialua Company and is carried as an asset of the Waialua Company. If the Wahiawa extension ditch goes beyond the north boundary of the Holt lands into the Bishop Estate lands, such extension would be set up on the accounts relating to the Bishop Estate lands.

(In order to clear up a question asked by the court the witness was recalled on

Direct Examination

and testified as follows:)

Exhibit S-5 shows the cost of improvements which are physically located on the Holt lands and none other. Exhibit S-6 shows those improvements physically located on the Holt lands which have been abandoned. Exhibit S-7 includes only the cost of the dam and spillway of the Wahiawa Water

(Testimony of L. N. Mackomiskey.)

Company and none of the other capital expenditures of the Wahiawa Water Company. Exhibit S-8—the cost of the Wahiawa ditch and Wahiawa extension ditch, from the outlet valve of the Wahiawa dam to the boundary of the Holt land—includes the cost of the ditch running from the outlet dam of the Wahiawa reservoir down to where the extension ditch commences, and that there is then included the cost of the extension ditch only from the end of the main ditch to the south boundary of the Holt property. Therefore, the only item requiring allocation that his Honor referred to is the cost of the Wahiawa extension ditch from the end of the main ditch near Kemoo to the north boundary of the Holt property, the aggregate of this being slightly over \$11,000. Inasmuch as that constituted but one item on the books, it became necessary to apportion the item in order to show the expenditure on the Holt land as distinguished from the expenditure off the Holt land. This apportionment was made after consultation with Mr. Duarte, and the item was allocated half to the Holt land and half to the land south of the Holt boundary.

In practically every instance, with respect to the items of improvements, there are documents made contemporaneously with the improvements which show the costs. This is true with the Wahiawa ditch extension, the only apportionment being that apportionment which was required for the portion off the Holt land and the portion on the Holt land.

JOHN GOMES DUARTE

was called as a witness for Respondent, was sworn, and testified as follows:

Direct Examination.

At present I am employed by Castle Cooke, Limited, but from the latter part of 1900 to April 1, 1924 I was employed directly by the Waialua Company, and since April 1, 1924, in a consulting capacity on a retainer basis. I was a resident at the plantation from 1900 to 1924. I was employed as surveyor and engineer.

I first knew of the Holt lands in 1901, becoming more familiar with them, particularly in 1904 and 1905. I knew the condition of the Holt lands at the time of the execution of the lease (Exhibit A-8) to the Waialua Company. I had occasion to go through these lands very often. There were nothing but small cattle trails on the lands. On the lower part of the lands, up to an elevation of 400 to 450 feet, there was a dense growth of lantana and scrub guava, and on the part north of the Helemanogulch the lower portion was thickly covered with rock. Likewise, on the south side of the Helemanogulch there was also a lot of rock. The only improvement on the Holt lands at the time of the execution of the lease, was a little house by the government road, occupied formerly by one Dr. Reed and later by Dr. Brodie. No portion of the property was under cultivation.

(Testimony of John Gomes Duarte.)

My work in connection with the Holt lands shortly after the execution of the lease, was the Wahiawa ditch extension. I surveyed that ditch line from the Kaheeka boundary to the north, or to the south boundary of the Opaeula ditch. Work of construction on that portion of the Wahiawa ditch extension commenced in 1905 after the lease was executed, being complete in 1906, at which time the first water was brought onto the lands and into that ditch. I surveyed for other improvements upon the Holt property, such as reservoir sites, railroads and siphons, determining quantities, capacities and so on. Up to 1924 I did practically all of the surveying and engineering work in connection with the improvements upon the Holt lands. I located and surveyed the route of both the Helemano ditches and likewise that of the Poamoho branch. The same is true of the reservoirs on the Holt property. I likewise located all the railroads shown on Exhibit S-4, with the exception of a piece of railroad to eliminate two switchbacks.

I conferred with Mr. Mackowinsky and designated to him the improvements which are shown on Exhibit S-6. This exhibit (S-6) sets forth accurately all of the improvements constructed upon the Holt property which have been abandoned up to the date shown on the exhibit. I also conferred with him in respect to the ascertainment of the cost of construction of that portion of the Wahiawa extension ditch which is located upon the Holt property.

(Testimony of John Gomes Duarte.)

In regard to this latter, the following method was used:

From the distributing point at Kemoo, or the end, you might say, of the Wahiawa reservoir ditch at the weir, there was a certain amount of money spent up to a certain point on the Holt lands, and later there was another contract for the construction of this ditch to this point on the Holt lands to the north boundary of the Holt lands. These two amounts were added together, and in view of the fact that half of the line there represented was on the Holt lands, we divided the total item by two. The records consulted showed accurately the cost of the ditch from the Kemoo junction to the north boundary of the Holt property. The allocation was on the basis of distance and did not include the cost of siphons.

At the request of counsel for the Waialua Company, I went onto the Holt Estate lands with a photographer and indicated to him the photographing of the improvements. All of these improvements which were then photographed are on the Holt lands, except as indicated by the captions in the photograph book which I have here. The photographs were then put in a book marked "Photographs," containing 56 separate photographs. Such photographs are true representations of the physical items indicated by the caption or title below each respective photograph. I myself prepared the book, together with Mr. Rudin of the Waialua

(Testimony of John Gomes Duarte.)

Company. The captions below each photograph are true. Photograph #1, which is of the Waialua mill, is not on the Holt land. The photograph of the Wahiawa dam and reservoir is likewise not on the Holt land, although the photograph does show a part of the Holt land. The photographs in this book accurately and truly show, as of today, the condition, nature and location of the respective items shown by the captions.

(Over the objection of counsel for Petitioner, the book of photographs was received in evidence as Respondent's Exhibit S-9, with the privilege to counsel for Petitioner at any time, on further examination, to object to any items in connection with or appearing in the captions which are considered objectionable to Petitioner. The original of said Exhibit S-9 is, by order of the Supreme Court of Hawaii, a part of this record and such book of photographs is hereby referred to and incorporated herein.)

WITNESS RESUMES (referring particularly to the improvements marked on the map, Exhibit S-4): Helemanoe 1 Camp, so indicated on the map, is located about a quarter of a mile east of the main government road near the west corner of the map. (The witness thereupon referred to certain memoranda prepared by him, which were handed to counsel for Petitioner for examination.) This camp consists of two houses—wood frame buildings built in 1911—and will accommodate about five laborers.

(Testimony of John Gomes Duarte.)

Helemano 3 Camp is located about half a mile east of the main government road, as indicated on the map. It consists of five wood frame buildings accommodating about thirty laborers, built in 1906. The physical condition of the buildings is very good; they are kept repaired and maintained and kept up in very good shape. The same is true of the buildings in Helemano 1 Camp just referred to.

Helemano 4 Camp is located about a half mile east from the main government road. This was built in 1912. There are twenty-seven houses and a bath-house in that camp and the same will accommodate sixty-one laborers, more or less. The physical condition of the buildings composing the camp is very good; they have all been repaired and maintained, and such constant repairs have kept them in good order and condition.

Helemano 6 Camp is located about one and a quarter miles east from the west boundary of the Holt lands near the circular reservoir shown on the map. This camp was built in 1919 at the same time the reservoir was built. There are twenty houses and one bath-house in that camp. The camp will accommodate forty-eight laborers. It is in good physical condition, a photograph in Exhibit S-9 illustrating that particular camp.

Opaaula 9 camp is located about a quarter of a mile south from the north boundary of the Holt lands and about one and a quarter miles east from the government road. This consists of thirteen

(Testimony of John Gomes Duarte.)
houses and one bath-house, accommodating thirty laborers. It was built in 1908 or 1909. This camp is in very good physical condition.

Helemano 10 Camp is located near the south bank of the Opaaula gulch, about two and a half or three miles from the government road, a little bit south of the north boundary of the Holt lands. This is also known as Opaaula 10 Camp. It consists of nine houses and one bath-house, accommodating about twenty laborers and being built in 1908 and 1909. The camp is in very good physical shape and condition.

Opaaula 11 Camp is located about three or three and a quarter miles east from the government road, also near the south bank of Opaaula gulch near the reservoir called Helemano 11 reservoir. That was built at about the same time the reservoir was built, in 1912. It is in very good physical shape and condition.

In regard to supplying domestic water to these camps, we first built a little domestic water reservoir about a mile east from the government road adjoining the Kemoo ditch extension, or waterway. It was supplied with mountain water from the Helemano system. These various camps are now supplied with domestic water consisting of a pipe system with the source of water supply from Pump 3, the pump not being on the Holt lands.

The camps I have described are entirely located upon the Holt lands, but the laborers living in these

(Testimony of John Gomes Duarte.)

camps work sometimes on the Holt lands and at other times on other lands of Waialua outside of the Holt lands. The manager controls that feature of it. These laborers may be detailed to any section of the Waialua plantation.

The total distance of railroads originally constructed on the Holt lands is 9.75 miles, of which 2.75 miles have been abandoned. Originally we used the 25-lb. rails, but that has been gradually replaced with 35-lb. rails. There are two trestles: one trestle is across the Poamoho gulch in Grant 238, about 300 feet long; and there is another trestle in the Helemano gulch about 100 feet long. The railroad upon the Holt property is not continuous. The first piece is located in Grant 238 in the Poamoho gulch, and the length of it from point to point, indicated by me on the map, is .2 of a mile. That is where the Poamoho bridge or trestle is located.

A second piece runs parallel to the government road on the upper side. After it leaves the government road it goes into the Helemano gulch up to a point where it gets into the Bishop Estate lands. It is located on the westerly edge of the Holt lands. This is a piece about .65 of a mile, and on this piece there is a small trestle crossing the Helemano stream about 100 feet long. The principal purpose of this last section is to reach the lands of the Waialua Company lying north of the Holt lands, as well as to reach the northerly portion of the Holt lands themselves. In respect to the first line of railroad

(Testimony of John Gomes Duarte.)

mentioned, that crossing the lands upon which the Poamoho pump is located is simply to traverse the land upon which the pump is located.

Then there are also three branch lines running into the cane fields above the main lines. The main line, or the line I have just described, namely, that on the western edge of the Holt lands, is the main line of the company's system. There are three branch lines: a small branch line that crosses the Holt land onto Grant 607—a distance of .1 mile on the Holt property; the next branch line starts just at about the point of the intersection of Grant 607 with Royal Patent 4475, at the westerly end, and proceeds through Helemano 4 field. This line continues on for a total distance of 6.8 miles on the Holt lands. A part of that has been abandoned—a total of 1.7 miles—and in another place on this line, to improve the railroad system and the rerouting of the same, we eliminated two switch-backs of .95 of a mile. The third branch begins at a point near the Opauala stream trestle on the main line of Bishop Estate land and comes up through Helemano 3 field into the Holt lands with a switch-back; then it goes in a general northerly direction for a distance of two miles.

The railroads upon the Holt properties, or running through them, are of two general characters: main and branch lines. The main line crosses the property upon which the Poamoho pump is located, proceeding northerly therefrom, across lands not belonging to the Holt Estate, and across the tip end

(Testimony of John Gomes Duarte.)

of the Holt Estate where it crosses into Bishop Estate lands. There are thus three branch lines from this main line: the first branch taking off from the main line at about the Holt property on which the Poamoho pump is located, proceeding northerly and easterly into other lands not classified as Holt Estate lands; the second branch takes off from the main line at about the intersection of the main line with the southerly boundary of the Holt Estate, and proceeds thence in an easterly direction along the property lying south of the Helemano stream; the third branch takes off from the main line at about its intersection with the Bishop Estate lands and proceeds in an easterly direction along the property lying to the north of the Helemano stream. The Holt Estate lands are separated into two major portions by the Helemano stream, which has necessitated the construction of the separate branch lines so that one may reach the land lying south of the stream and the other the land lying north of the stream.

In response to a question by the court, I stated that a section of the railroad lying south of the Helemano stream was abandoned. The first part of such abandonment was in 1923. The occasion for this was the leasing of those lands—the lands lying easterly from the Wahiawa extension ditch, or the upper lands—to the Hawaiian Pineapple Company. That abandonment was occasioned by the making of the Hawaiian Pineapple Company lease. With re-

(Testimony of John Gomes Duarte.)

spect to the land of the Holt Estate lying north of the Helemano stream, it is not possible, economically, to cross that stream with wagons or railroads, with the exception of the extreme lower end where it is crossed by a plantation railroad. The other parts are economically impossible.

All of the pineapple lands lying to the north of the Helemano stream are supplied or harvested by trucks coming down the main arteries; that is, ordinary roads, plantation roads, or pineapple roads, to where the terminus is of the Helemano 9 Railroad, or of the branch line designated as the Third Branch Line. From there the pineapples are taken on the plantation line to the Waialua railroad station, which station belongs to the Oahu Railway & Land Company.

The physical condition of the plantation railroads located upon the Holt property is as follows: the roadbed is far better than when made; you have a settled track and a settled roadbed. As to rails and ties, they have either been replaced or are gradually being replaced, so that the railroad as a whole is in A-1 condition. The main line was all 35-lb. rails. The branch lines originally had 25-lb. rails but since 1905 these have been replaced with 35-lb. rails, so there is very little left of the original 25-lb. rails.

Helemano 3 dam and reservoir is on the extreme westerly boundary of the Holt Estate property. It was built in 1906. It is more or less of a circular dam with a total distance around the dam of 577

(Testimony of John Gomes Duarte.)

feet. The height of the dam is $12\frac{1}{2}$ feet, with a crest of 12 feet. The slopes, both inside and outside, are $1\frac{1}{2}$ to 1. The capacity of the reservoir is 2,000,000 gallons. The purpose of this reservoir was originally to store tail race water. In other words, after the irrigation, in the evening when the irrigation is over, a lot of that water is still running; then the gates are closed from the fields and the water is run down and stored in that reservoir. It also stores a little night water. The reservoir is located entirely upon Holt lands. The waters impounded in the reservoir serve the Holt lands and other lands outside of the Holt Estate owned by Waialua. The physical condition of this reservoir is good. The reservoir or dam is practically a compact unit now; it won't settle any more and its holding qualities are perhaps better today than the day it was built. I am sure of that—of any reservoir that is built that way.

The Helemano 6 reservoir is located about 500 feet northeasterly from the junction of the Helemano ditch and the Wahiawa extension ditch. It was built in 1908. This reservoir is at an elevation of about 700 feet. It is really a dam put across a gulch 410 feet long. The height over all, in the center of the dam, is 48 feet. The width of the crest is 16 feet. The inside slope is 2 to 1, and the outside $1\frac{1}{2}$ to 1. The cubic content of the dam itself—not of the reservoir—is 23,140 yards. It holds a depth of water of 35 feet. The area flooded is 6.6 acres. The spillway is a concrete spillway 10 feet wide, located on the north side of the dam. The purpose of the reser-

(Testimony of John Gomes Duarte.)

voir is to store night water from the Wahiawa reservoir ditch and also water from the Helemano ditch system. Water in Helemano 6 reservoir cannot find its way into the Wahiawa extension ditch but water from the extension ditch can find its way into the reservoir. The reason is that water stored in that reservoir is used on the cane lands immediately below, through an outlet ditch from the dam where it is taken to the area below in straight ditches or on laterals, irrigating cane lands lying to the west, some of which are Holt lands and some of which are other cane lands belonging to Waialua.

Helemano 6-B reservoir is a little circular reservoir, about two miles easterly from the main government road. It was built in 1912, at an elevation of 460 feet. It is a circular dam having a circumference of 850 feet. The height of the dam at its highest point is 12.4 feet; the width of the crest is 12 feet; the slopes, both inside and outside, $1\frac{1}{2}$ to 1; and the cubic content of the dam 4754 cubic yards. It will impound 2,500,000 gallons. It is used in a similar area as in the preceding Helemano 6 reservoir. It irrigates Holt lands and other lands controlled by Waialua. The present physical condition of that reservoir is good, or better, than when built. Any of those earthen dams, after they have been used a certain number of years, hold better, and the dam itself becomes very compact and hard. The same statement is true as to Helemano 6 reservoir.

Helemano 11 reservoir, both the dam and reservoir, is situated a little east of the Wahiawa ex-

(Testimony of John Gomes Duarte.)

tension ditch before the ditch enters the Opaaula 54" siphon near the north boundary of the Holt Estate lands. This was constructed in 1912 at an elevation of 680 feet. It is a dam which is located in a small dry gulch. The length of the dam across is 343 feet; the height at the center in the deepest place is 37 feet; the width at the crest 14 feet; the slope inside 2 to 1, and the outside slope $1\frac{1}{2}$ to 1. The reservoir has a capacity of 23,000,000 gallons, with a flooded area of 7.3 acres. The cubic content of the dam is 16,810 yards. The water impounded in this reservoir is taken through a small outlet ditch, traveling about a half mile westerly until it reaches what we call the Helemano 11 road. From there it travels down that road, or westerly, irrigating Holt lands and also other lands outside of the Holt lands. The physical condition of this dam and reservoir is the same as Helemano 6 dam and reservoir.

The Upper Helemano Reservoir is located in the pineapple area somewhat near the center of the area that lies south of the Helemano stream, but lying closer to the Poamoho stream. It was built in 1918. There had been an earlier reservoir there, built in 1914, but it failed in 1917. A new reservoir was built there to replace that, at an elevation of 980 feet. The length across the dam is 210 feet; height at the center 40 feet; width at the crest 16 feet; inside slope $2\frac{1}{2}$ to 1, and the same on the outside slope. The cubic content of the dam is 20,000 cubic yards. Its capacity is 50,000,000 gallons and its area 12.8 acres. Water stored here is primarily surplus water

(Testimony of John Gomes Duarte.)

from the Helemano ditch system. The water is taken from an outlet ditch for about two miles; then it connects with the Helemano ditch and travels down this ditch where it is used on the lower lands. It is also taken through a lateral ditch across the Holt lands onto the Waialua lands and to another reservoir, namely, the Helemano 15 reservoir. From that latter reservoir the water is taken onto other Waialua lands so that the water from the upper Helemano reservoir is used on the Holt cane lands and other cane lands of Waialua. From Helemano 15 the waters come down onto Kaheeka land—part of the Waialua plantation. The rebuilt reservoir was constructed in 1918, and its present condition is as good as the day it was built.

Helemano 12 reservoir is located in a dry gulch surrounded by the pineapple area. It was built in 1915, serving two purposes: as a dam and a railroad fill. It is at an elevation of 820 feet and the length of the dam is 250 feet; height 34 feet; width of crest 14 feet; slope inside 2 to 1; outside $1\frac{1}{2}$ to 1. The cubic content of the dam is 8,015 cubic yards, and the capacity of the reservoir 7,000,000 gallons. The waters impounded are taken through an outlet ditch into the Helemano ditch or dropped into a gulch, and from thence into Helemano 6 reservoir. If it finds its way into the Wahiawa ditch extension it is carried through that ditch onto the Holt lands or other lands controlled by Waialua. If it finds its way into the Helemano 6 reservoir the water from there is taken through an outlet ditch which goes

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(Testimony of John Gomes Duarte.)

down below the Wahiawa extension ditch, serving the Holt lands and other lands outside of the Holt lands. This reservoir (Helemano 12) receives its water from the Helemano ditch system. The reservoir is in as good physical condition as when built.

Helemano 4A reservoir is located about $1\frac{1}{2}$ miles easterly of the main government road near the south boundary of the Holt lands in Royal Patent 4475. It was built in 1916. It is a three-sided dam with a length of 759 feet; height 14 feet; and crest 8 feet wide. The slopes inside are 2 to 1, and outside $1\frac{1}{2}$ to 1, with the content of the dam 7,296 cubic yards. The reservoir has a capacity of 3,000,000 gallons. It secures its supply of water either from Pump 10 High Lift or from the Wahiawa extension ditch, or from any of those sources above the dam. The waters impounded in that reservoir are taken by two small outlet ditches branching north and south. The branch taking the water north travels down the road in a straight ditch or lateral, serving the Holt lands and other lands outside of the Holt lands; the south branch serves only lands outside of the Holt lands. The physical condition of the reservoir today is perhaps better than when it was built.

Helemano 9-C reservoir is located about a quarter mile southerly from the north boundary of the main Holt lands and perhaps $1\frac{1}{2}$ miles easterly from the western side of the Holt lands. It is located about the center of the cane area north of the Helemano stream. It was built in 1917. Its elevation is 325 feet. It is a three-sided dam of 782 feet length containing

(Testimony of John Gomes Duarte.)

6143 cubic yards of material. The height is 12 feet; the crest is 10 feet wide; and the slope inside is $2\frac{1}{4}$ to 1, and outside it is $1\frac{1}{2}$ to 1. The reservoir has a capacity of 3,000,000 gallons. It secures its water from the High Lift of the Poamoho pump which is located on Grant 235. It may also secure its water from the Wahiawa extension ditch or it may impound waters from the Helemano ditch development. The water is used on Holt lands and other lands outside. The reservoir and dam are in good condition—perhaps better than when they were built.

Helemano 15 reservoir is a little west from the center of Grant 431 but it floods a portion of Grant 431 which is Holt land. It was built in 1919. The dam is at an elevation of 800 feet; its length is 286 feet; the width at the crest is 14 feet; slope inside 3 to 1 and outside $1\frac{1}{2}$ to 1. The cubic content of the dam is 11,300 cubic yards, and its capacity 23,000,000 gallons. It is surrounded by the so-called pineapple area and gets its water supply from the upper Helemano ditch system. The waters impounded are taken through an outlet ditch and dropped into the Wahiawa reservoir ditch and from there carried onto the Kaheeka lands and other lands outside of the Holt lands, though some of it may find its way onto the Holt lands through the Wahiawa extension ditch. The dam itself is not on Holt lands. The physical condition of the dam is better than when built. All of the waters from the Wahiawa reservoir are used on Waialua lands, in-

(Testimony of John Gomes Duarte.)

cluding the Holt lands. None of the water is used on lands not owned or controlled by Waialua.

Helemano 54" siphon is located about the center of the Holt lands in the Helemano gulch. It carries the Wahiawa extension ditch waters across the gulch. The siphon was built in the latter part of 1906, of 54" steel rivetted pipe. The length of the pipe is 1400 feet and the thickness of the siphon ranges between $\frac{3}{8}$ " on the bottom to $\frac{1}{4}$ " on the top sections. The total head of water in the siphon is 260 feet. The siphon has corroded somewhat since it was installed and is not in as good physical condition as the time we put it in, but it should last between five and six years more.

The Opaëula 54" siphon is located on the Wahiawa ditch extension, about the center of the Holt lands and the north boundary of the Holt lands. It was built in 1906 and its length is 900 feet. It was built of 54" steel rivetted pipe ranging from $\frac{5}{16}$ " thick on the bottom to $\frac{1}{4}$ " on the upper section. It is located on the Opaëula gulch, partly on Holt lands and partly on Bishop Estate land, and the cost of the siphon has been allocated to the two lands. The siphon is used to transport the Wahiawa water onto the Bishop Estate lands to the north. This siphon is also corroded but should last five to ten years more before being replaced.

The No. 6 Helemano siphon is located in the Helemano gulch on the high lift ditch of Pump 10, and carries the water from the south side of the Helemano gulch to the north side to Helemano 9-C

(Testimony of John Gomes Duarte.)

reservoir. Its location is about $1\frac{1}{2}$ miles easterly from the west boundary of the Holt land. The siphon was built in connection with the high lift of the Poamoho pump. I believe it was built a year later, in 1929. The purpose of the siphon is to carry the Poamoho water across the Poamoho gulch to Helemano 9-C reservoir. The siphon is 1300 feet long, built of 12" cast iron pipe. It has a total head of 250 feet. The water is used on the Holt lands and other lands outside of the Holt lands. The siphon is practically new, and, being of cast iron pipe, I suppose it will have a life of fifty years.

Helemano No. 11 siphon is a little below the Helemano 11 reservoir. It replaced an old flume which gave way. It takes water in connection with the outlet ditch of Helemano 11 reservoir. It was built in 1929, of 24" concrete pipe. Its physical condition is good, as concrete does not deteriorate very fast. It has a small head of 15 feet.

The Wahiawa reservoir ditch, leading from the outlet of the Wahiawa reservoir down to Kemoe, was started in 1905 and completed in 1906. It traverses the north side of the Kaukonahua gulch for a distance of four miles. There is a series of 21 tunnels and a piece of open ditch about 800 to 1,000 feet long. The size of the ditch is 6'x6', mostly through rock tunnels. The aggregate distance of the tunnels is 19,400 feet. The open ditch is 5 feet deep and $7\frac{1}{2}$ feet wide. The purpose of the ditch is to transport water from the Wahiawa reservoir to the Waialua lands, including the Holt lands.

(Testimony of John Gomes Duarte.)

The Wahiawa extension ditch is in good condition. There are two sections that eroded some, but those sections have been replaced with concrete sides. The Helemano upper ditch is about 30,000 feet long. It travels in a southwesterly direction for two miles, then in a westerly direction to the junction of the Wahiawa ditch extension at a point about 1,000 feet north from the south boundary of the Holt lands. It is located entirely on the area of lands leased to the Hawaiian Pineapple Company. The ditch was built in 1908. The intake is at an elevation of 1,075 feet. It travels through a series of fifteen tunnels 6'x6' for a distance of 10,450 feet, and then an open ditch, about 41½' deep by 71½' wide, for a distance of about two miles, and then it travels a distance of about two miles, in a regular-sized ditch. The ditch is in good condition, and has not depreciated. The waters travel down to feed the cane lands below the Wahiawa reservoir ditch, and surplus waters drop into the upper Helemano reservoir and are stored there to use as we need them. Part of the waters find their way into the Wahiawa extension ditch for there is a branch of the Helemano inlet ditch that takes water into the Helemano reservoir dam, and from there it can find its way northerly to the Holt lands and other lands to the north.

The Poamoho branch is at an elevation of 1075 feet at the east boundary of the Holt land and has a total length from the intake to where it joins

(Testimony of John Gomes Duarte.)

beyond the Helemano ditch intake, of 6,130 feet. It runs through part of the pineapple area and traverses the north side of the Poamoho gulch. There are nine tunnels in the ditch of an aggregate length of 5,420 feet. The tunnels are $4\frac{1}{2}$ feet deep by 5 feet wide. The physical condition of the ditch is as good as when built.

The Helemano upper reservoir outlet runs in an approximately northwesterly direction for about two miles, where it joins with the upper Helemano ditch. It is all open ditch with a small flume in a dry gulch. The ditch is 3 feet deep by $5\frac{1}{2}$ feet wide, the upper portion of the ditch being lined, both on the sides and at the bottom, with concrete and masonry. It is in good condition, without erosion.

The lower Helemano ditch is not on the map. Exhibit S-4. It was built in 1905, with an intake in the Helemano gulch, tapping the Helemano stream at an elevation of about 100 feet. It was divided into two branches and I believe was abandoned in 1908. It was abandoned because the flow was unsatisfactory. After the upper Helemano ditch was built the lower Helemano ditch was not necessary.

The total length of waterways on the Holt lands is ten miles. They comprise what we call straight ditches, following down the roads which are permanent in nature, and also following the outlet ditches, as those in connection with Helemano lower reservoir, Helemano 6 reservoir, Helemano 6-D reservoir, Helemano 4-A reservoir, Helemano 3

(Testimony of John Gomes Duarte.)

reservoir, pump 10 high lift ditch, and the extension of the Kemoo power plant ditch. These waterways are permanent ditches. Some of the sections used to be eroded but these sections have all been replaced with either concrete parts or masonry sides and concrete bottom. There have been at least a mile and a half of such replacements. The outlet ditches—most of them—are in as good condition as when built.

The roads are generally lateral roads branching from the government roads through the fields, roads across the Helemanoguleh, roads crossing gulches connecting one field with another, and of that nature, a road overlooking and connecting Helemanog and Helemanog 6, bridges in connection with these roads, and then fence lines along the government road which the plantation has maintained. The roads are continuous; they go through the cane fields, through the pineapple areas and back to Waialua on other routes. The roads are in as good condition as when built and are now better maintained than formerly. The fences are all in good condition as we have to keep them in good repair to prevent stock from going into the fields. There are about twenty miles of these roads.

The total length of the flumes on the Holt lands is 1,250 feet. In the southerly portion of the Helemanog ditch there is one flume 190 feet long, of Aruco iron; another flume built principally of concrete with wooden box panel and trestle, and on the Wahiawa ditch extension there are some flumes.

(Testimony of John Gomes Duarte.)

and trestles. There is also a flume in connection with Helemano 6 outlet and one in connection with Helemano outlet 11 ditch. All the flumes are in A-1 condition.

There are four and a half miles of transmission system in the Holt lands, built in 1922, 1923 and 1927. The transmission consists of poles, accessories and meters. While the transmission lines referred to are located entirely on the Holt lands, they are really a part of the entire transmission system of the Waialua plantation. The physical condition of the electric transmission system is A-1.

The Poamoho pump is located on Grant 235, which is a part of the Holt land. It was completed in 1928. The building is of tongue and groove; it consists of machinery shop, chamber, pipe lines, etc. There are four centrifugal electric pumps of 4,000,000 gallons daily capacity—two of such pumps for the 190-foot height and two for the 380-foot height—connected in series, and parallel, enabling four, eight, and twelve million gallons to be pumped to the 380-foot height through a 30" rivetted pipe line, where the water is supplied directly to the fields or stored in the Kaheeka reservoir. Also, four and eight million gallons may be pumped in another direction to an elevation of 380 feet. The pumps are located in reinforced concrete chambers, about 50 feet below the surface. The wells are also situated on Grant 235, a little distance from the pump chamber and around it.

(Testimony of John Gomes Duarte.)

In the same pump chamber there is also a No. 10-A domestic pump that pumps 150 gallons per minute and supplies domestic water to the various plantation camps through a pipe line, partly on the Holt land, but mostly on the Waialua lands outside the Holt lands. Work of construction on the Poamoho, or pump 10, was started in 1926.

I was present at the time all of these improvements were constructed and generally supervised them, with the exception of the high lift and low lift of pump 10 and the rerouting of Helemano 4 railroad. I am personally familiar with all the improvements testified to except as indicated. All of the improvements except those which have been abandoned are presently in use and all are used as integral parts in the activities of the Waialua Agricultural Company in the conduct of its business.

Cross Examination.

About 35% of the sugar cane area of Waialua plantation is in the Kawailoa lands, which lands have a greater area than the Holt lands. The Kawailoa lands get water from pumps and also some water from the mountains by a ditch system entirely outside the Holt lands. If the Helemano waters were cut off at any particular time, it would not seriously impede the cultivation of the various lands. In the Holt lands there are about 550 acres north of the Helemano gulch and about 975 acres south of the Helemano gulch. I am speaking of net areas. The items of expenditure on Exhibit S-5 are for improvements entirely on the Holt lands, except

(Testimony of John Gomes Duarte.)

that the Helemano high lift pump is part on and part off the Holt lands, and figures are now being prepared to make this correction and allocate such expenses.

Poamoho Pump No. 10 and Poamoho 10-A domestic pump, carried on Exhibit S-5 as having cost some \$213,000, represent improvements physically entirely upon a separated section of the Holt land indicated as Grant No. 235, except that part of the high lift and low lift pipelines running continuously from pump 10 onto lands outside the Holt lands, and that part of 10-A domestic water system outside the Holt lands. This parcel of Holt lands, containing an approximate area of 50 acres, is entirely surrounded by lands other than Holt lands, is separated from the main Holt area, and the entire improvement, except as indicated in Exhibit S-11, could be included in a portion of the parcel by taking a point 500 feet westerly of the easterly boundary of the parcel and cutting off the land at that point by a line running parallel with the easterly boundary line of the parcel.

Helemano 15 reservoir is partly off and partly on the Holt property but it has been impossible to make any segregation of that, the map showing its location.

Sugar was grown on the Kawailoa lands before the clearing of the Holt lands. In the early years we had more pumps and were pumping up to a high elevation but many of those pumps have now been taken down.

(Testimony of John Gomes Duarte.)

In regard to railroads, the construction is all with 35-lb. rails, whether main or branch lines, except that at the higher elevations there are still some 25-lb. rails. The ties on all lines are redwood ties. On all of the lines we use the same sized spikes, fish plates and bolts.

Grant 235 is about 3,000 feet long. North of the Holt area there are about 250 acres owned in fee by Waialua but there are other lands not owned or controlled by Waialua or leased to Waialua. The remainder is Bishop Estate land leased to Waialua.

The Holt lands in cane comprise about 15% of the net cane area owned and controlled by Waialua.

Redirect Examination.

The areas south of the Holt lands are irrigated from the Helemano system when there is an abundance of water from this system and more than enough to irrigate the area of the Holt lands. We then distribute that waste water which is carried into the Helemano 15 reservoir and used on the lands below. While it is true that if the Helemano waters were not put onto lands south of the Holt lands it would not seriously impair their use for cane, it would mean that other water would have to be used to replace that amount of Helemano water which would have to come from the Wahiawa reservoir. We use water in the Helemano 15 reservoir at times when we have more water coming through the system than we can use. The Helemano waters are waters originating in the lands owned by the Bishop Estate and under lease to Waialua and also

(Testimony of John Gomes Duarte.)

the school lands of the Territory leased to Waialua. The inlets of the Helemano system are located on the Holt lands near the upper boundary of such lands: The Helemano waters are in reality waters falling upon lands lying to the east of the Holt area and merely caught near the upper boundary of the Holt area in ditches.

Helemano reservoir 15 has a connection with the Wahiawa extension ditch through an outlet ditch. The water from that reservoir could be put into the Wahiawa extension ditch. If the Helemano waters were not taken off the Holt land and used on the land lying south, or were carried into the Wahiawa extension ditch and used on other lands, the whole ditch system, including the reservoir, would be absolutely useless. The system is used as a supplement to the Wahiawa system.

I have prepared a statement showing the assessment of the Holt lands situated at Waialua and Wahiawa for the years 1900 to 1931 inclusive, taken from the assessment books in the Honolulu and Waialua tax offices. It has been certified to by the Deputy Assessor in Honolulu and the Deputy Assessor in Waialua.

(The document referred to was received in evidence as Respondent's Exhibit S-10 and shows that the assessment for the 18/27 interest in the Holt lands (being the interest herein acquired by W. R. Castle, trustee, in 1910) was against the R. W. Holt Estate on a value of \$48,000 for such 18/27 from the year 1900 to 1912 inclusive, then against W. R.

(Testimony of John Gomes Duarte.)

Castle, trustee, on a value of \$120,000 to 1920 inclusive, then against the Helemano Real Estate Trust for 1921 in the same amount, and thereafter included in the general Waialua Agricultural Company assessment as an enterprise for profit. The exhibit likewise shows that taxes were delinquent as to the R. W. Holt $2/3$ interest for the period 1900 to 1904, inclusive, for each of said years, in the sum of \$480 for each year.)

WITNESS RESUMES: There is an area of land north of the Holt lands, comprising some 5,600 acres, which are owned by Waialua, but none of it is under cultivation for sugar. There was a house located at the extreme westerly end of the Holt property in April 1905, but it was not occupied and had been abandoned.

MR. BISCHOFF,

again being recalled, testified on

Further Direct Examination

as follows:

I located the site of the Poamoho dam and also designed the construction of the pump building for the Poamoho pump. I fixed the location of the pump in November of 1926. We were instructed to locate the pump on fee simple lands in Poamoho gulch at an elevation of 50 to 60 feet above the sea level, and it was pursuant to those instructions that I located the pump on the Holt lands.

(Testimony of Mr. Bischoff.)

The purpose of building this pump was on account of the fact that there was insufficient water to irrigate the plantation lands; that more water was needed; and the only way to get that water was through pumping. The fact that other areas were already supplied by pumps made it logical to locate this pump (Poamoho pump) where we did.

The location of this pump was dictated by a consideration of the plantation as a whole, and not particularly with the idea of the Holt lands. I laid out the ditches, siphons and pipelines connected with the Poamoho pump, and in laying out the same did not pay any particular attention as to what lands they traversed; that is to say, as to the title to those lands. They were laid out solely with the view point of economical irrigation to the lands that might lie below them in elevation.

The main outlet pipes of the Poamoho pump lie in part on Holt property and in part off the Holt property, but are not divided or cut or separated in any place at the boundaries of the Holt property. They consist of single units from the pump to their ultimate destination.

The high lift pipeline consists of a 30" diameter rivetted steel pipe running from the outlet of the pumps located in Poamoho gulch, running through a section of the Holt lands in an easterly direction, across Poamoho stream, running up on the south of the so-called Kaheeka fields, with its outlet at an elevation of 380 feet where it may empty into the

(Testimony of Mr. Bischoff.)

Kaheeka reservoir or flow along in an outlet ditch at that elevation. The length of the pipe is 3085 feet, there being approximately 600 feet within the Holt Estate area, and 2485 feet outside.

The total cost of this high lift pipe was \$35,754.30. I have, however, allocated the cost with reference to the length lying on the Holt estate and the length lying off of it, but that is merely a mathematical computation based on the proportion of length of pipes lying on the Holt land, as compared with that off the Holt land. The low lift pipeline from the Poamoho pump is a 24" rivetted steel pipe running from the chamber of the Poamoho pump, crossing northerly to a portion of the Holt lands, and discharging at an elevation of 190 feet. The total cost of that pipe is \$9,293, and its length is 1,022.5 feet. I have made a similar segregation of the cost of this pipe, based on the footage on and off the Holt property, and also a similar computation with reference to the outlet pipe of the 10-A water system. The net result of the last, namely, the 10-A domestic water system, is that out of a total cost of \$4,700.56, the amount of cost allocated to the portion on the Holt Estate land is \$2,245.31.

Respondent's Exhibit S-11

was received in evidence, without objection, being a statement showing the allocation of cost of delivery pipe from Poamoho pump (#10) as between the Holt and other lands, prepared by the witness, being in words and figures as follows:

(Testimony of Mr. Bischoff.)

Item	Location		Total Cost	Allocation of Cost	
	Holt Estate	Outside Holt Est.		Holt Estate	Outside Holt Est.
High Lift Pipe Line, 30" Diam., 3085 ft. long.	600 ft.	2485 ft	\$35,754.30	\$ 6,955.70	\$28,798.60
Low Lift Pipe Line, 24" Diam., 1022.5 ft. long	400 "	622.5 "	9,293.50	3,636.20	5,657.30
TOTALS	1000 ft	3107.5 ft	\$45,047.80	\$10,591.90	\$34,455.90
10-A Domestic Water System			\$ 4,700.56		
150 G. P. M. Pump	All			200.80	
10 Horsepower Motor	All			100.00	
6" Diam. C. I. Pipe	430 ft.			1,560.31	
Incidental Construction Charges	Portion			384.20	
				\$ 2,245.31	
8,000 Gal. Tank		All			161.00
20 G. P. M. Pump.		All			93.00
Pump Building 8'x7'		All			265.00
1890 ft. 4" pipe		All			1,484.00
5 Horsepower Motor		All			68.00
Overhead Construction Charges		All			384.25
					\$ 2,455.25

(Testimony of Mr. Bischoff.)

WITNESS RESUMES: Referring to Exhibit S-11, the item which includes the allocation of the cost of the high lift and the low lift pipe line is included under Pump #10 Poamoho, under the segregation "Machinery", which has a total cost of \$164,541.62. My allocation would take out the sum of \$34,455.90 as not being on the Holt lands.

In regard to the next item on Exhibit S-5 (a total of Pump 10-A domestic water system, the last item on the schedule) from the total of \$4,700.56, there should be taken out \$2,455.25.

In response to a prior question of the court asking for information with respect to the quantity of the Helemano system water that is used on the lands lying north of the Holt property, I have studied the proposition but find it impossible to state the amount of Helemano water used on the so-called Kawailoa land. This is because the Helemano water is intermingled with the Wahiawa water which goes on to that land, and it is an uncertain quantity. It varies between different seasons, different days and different parts of days; for instance, a cloudburst in the mountains would bring down a large supply for a few hours, and then it would dwindle down again. When we have the Helemano waters we use them wherever we can. The quantity varies considerably, and definite quantities are not available most of the time.

The general practice is for each section luna (being the man in charge of a certain area of cane

(Testimony of Mr. Bischoff.)

land) to estimate the needs of his water for the next day to see what he has on hand of his own supply. To take a specific example: the man at Kawaihoa section would probably call up the man at Opaepa and say, "I need so much water," in terms of the unit of one-man water; then the man at Opaepa would estimate his needs and his own supply, and add onto it the supply he has to deliver to Kawaihoa below. The Opaepa man would call up the man in the Helemanoa section, where the section luna there will go through the same process and then will get in touch with the man in the Kemoo section. The Kemoo man, having water from only one source (the Wahiawa reservoir) then estimates his own needs and adds on the supply called for from the last section, and, consulting with the assistant manager, puts in the order for the supply of water to be turned on the next morning.

When the Wahiawa reservoir is at a certain level—approximately about half full—there is a limit on the amount of water that can be drawn, and if there is more needed, we go without that water. Then the pumps are started. Every night there is an inventory of all the water on hand made under the supervision of the plantation officials. On that inventory, based upon whether water is available at certain places, the use and amount of water to be used the next day is determined. There is then no discrimination or distinction as between sources of water as to where it is used; all is mingled.

(Testimony of Mr. Bischoff.)

Referring to the terms "local water," as compared with "Wahiawa reservoir water," if they have the local water they use it when they have it, in preference to the Wahiawa water. This is because Wahiawa is a reservoir that we depend on. Consequently we want to keep it at as high an elevation as possible. Our reservoirs wouldn't hold the local waters when we have them in abundance, so we naturally use it in our fields instead of throwing it away. Under those circumstances, if not immediately used, the local water goes to waste.

When I use the term "Helemano waters," or "Helemano system waters," I refer to the waters which are derived from the Helemano and the Poamoho streams by intakes located near the eastern boundary of the Holt Estate lands. Those waters originate from the Bishop Estate lands to the east, and also the Territory and school lands to the east. As to waters which are precipitated directly upon the Holt lands, this is water that finds its way through storm ditches into the Helemano ditch, and if it is a reasonable quantity then it can be used. In most cases, however, when it runs on that area there is a lot of silt and trash from pineapples carried into the ditch and we have to spill it into the gulch. These sporadic deluges cause considerable damage. Such rainfall as falls on the land above the Holt areas is not sufficient in and of itself for the economical or proper irrigation of the cane lands. The reason for this is that such sources are not reliable in definite quantities of water.

(Testimony of Mr. Bischoff.)

Cross-Examination.

The Wahiawa reservoir always has formed the main supply. The local water supplies, which you might call "kokua" supply (meaning "helping" supply), come at different periods and are sufficient at only a very few times during the year. We rely upon the Wahiawa ditch just as much as on the water from the systems nearer by. This is true, even in spite of the distance of the Wahiawa water. The lands at the foot of the Wahiawa reservoir ditch use Wahiawa water entirely. There is nothing else they could use. This area, however, is a comparatively small area of the whole plantation. There are ditches on the Kawailoa lands (north of the Holt Estate lands) coming from other water sources, as heretofore testified to. There are some pumps at the lower elevations of the Kawailoa lands.

(It was here stipulated by counsel that whenever a railroad, ditch, or other improvement crossed the Holt property line, cost was taken on those parts physically on the Holt property, and that so far as Exhibit S-11 is concerned, same indicated an apportionment of the total cost of the improvements by length as between the portion on the land and the portion off the land.)

As to the transmission lines, those lines are merely lines for the purpose of carrying electric current to the camps and to supply power and light to the land of the Bishop Estate. The greater length of the main transmission line running along the northerly portion of the Holt lands, lies off the Holt lands

(Testimony of Mr. Bischoff.)

with feeders into the camps. The only line of railroad running onto the Holt lands for the purpose of serving territory beyond the Holt lands is the comparatively small length of railroad running through the westerly end or tip of the Holt area.

The Heleman intake is there for the purpose of and collects the waters which reach that point in the natural flow of the stream.

Redirect Examination.

In connection with counsel's question regarding the main line of the railroad reaching areas north of the Holt Estate, I was only referring to that portion that counsel pointed to on the map. The main line also crosses the Holt lands on what is known as Grant 238.

With respect to the use of power through the transmission line, that power also goes to the Poamoho pump, so that the sources of supply of electricity for the Poamoho pump, both the large pump and domestic pump, is from the transmission system of the company. There is a system of transmission lines in the Holt Estate sufficient to connect up all the camps with the main transmission system. All of the transmission lines affecting the Holt Estate are actually shown as marked on the map, Exhibit S-4.

Counsel for petitioner, in questioning me, had followed only the line on the west end. Briefly, to review the transmission system, the main electric transmission line passes up through the Heleman

(Testimony of Mr. Bischoff.)

fields on lands other than the Holt lands. It enters the Holt lands near Helemano 4 Camp and the southern boundary of the Holt land, and passes through the Helemano 4 Camp, serving the Helemano overseer's house and Helemano 1. Camp, and then passes through the west end of Holt lands into the lands of Opaaula. There is a branch line running parallel with the southern boundary of the Holt lands, serving the domestic water pump, Helemano 3 Camp and Helemano 6 Camp. There is also another branch line from Pump 3, as shown on the map, Exhibit S-4, to the north of the Holt lands, coming into the Holt lands and serving Opaaula 9 Camp. There are also other similar lines coming from the transmission line which serve other camps as indicated on the map.

A. A. WILSON

was called as a witness for Petitioner on rebuttal. was sworn, and testified as follows:

Direct Examination.

I am manager of the Wahiawa Water Company but not a director. This Company was organized December 5, 1902, and I have been manager since 1915. On January 16, 1921, we had a very severe storm and lost our original spillway and we had to build a new spillway at an expense of \$210,000. This was actual cash going to replace or restore the spillway. The stock holdings of Waialua in the Wahiawa

(Testimony of A. A. Wilson.)

Water Company are not represented by rights of any kind, easements or otherwise, over the Holt lands, which the Waialua Company might have transferred to the Wahiawa Water Company.

The water company delivers water to Waialua at the outlet pipe of the dam, for which Waialua pays 13 of 1¢ per miner's inch. A miner's inch in this case is 9 gallons per minute, and that would figure out \$6.17 plus per million gallons. Our profits have been very small for the last ten or twelve years. We have paid no dividends.

Since December 21, 1923, all of the stock in the Wahiawa Water Company has been held by the Waialua Company, with the exception of the necessary shares to qualify directors. These directors have generally been officers or directors of the Waialua Company. All of the assets listed as belonging to the Wahiawa Company do belong to the water company. The Wahiawa ditch and all other ditches are owned entirely by the Waialua Company, the water company merely owning the reservoir, dam and spillway. Other developments are the property of the Waialua Company. The water company makes a delivery for domestic use for homesteaders but that is from an independent source back from a higher elevation. The income from that is independent from the income from Waialua.

Cross-Examination.

No water that is impounded by the Wahiawa dam is delivered to anyone other than Waialua. The

(Testimony of A. A. Wilson.)

water being delivered to the homesteaders arise from an entirely different system—a separate and independent ditch, having nothing to do with the reservoir. With the rate which we get from Waialua for water, it would be very difficult to maintain the ~~property in proper shape~~ and expect ever to show very much return.

(By stipulation of counsel extracts from the minutes of the meeting of the board of directors of the Waialua Agricultural Company, held February 23, 1905 and March 9, 1905, were received in evidence as Respondent's Exhibit S-12, and read as follows:

I, T. H. PETRIE, do hereby certify that I am Vice-President and Secretary of the WALALUA AGRICULTURAL COMPANY, LIMITED, and custodian of the records of all Directors' meetings of said Company:

I further certify that the following is a true copy of an extract from the minutes of a meeting of the Board of Directors held February 23, 1905, as shown in said records:

"The question of entering into a lease for the Holt lands at Waialua being brought up for consideration, through a formal proposition which had been submitted by Mr. Carlos A. Long, Administrator of the Holt Estate, and Mr. John F. Colburn, Agent of several of the owners, after some discussion it was moved by C. M. Cooke, seconded by F. J. Lowrey, that a committee of three, consisting of the President, Mr. E. D. Tenney, the Manager, Mr. W. W.

Testimony of A. A. Wilson.)

Goodale, and Mr. W. R. Castle, Attorney, be appointed to investigate the proposition and if satisfactory arrangements could be made, with power to close the lease, and the proper officers of the Company are hereby authorized to execute the same."

I further certify that the following is a true copy of an extract from the minutes of a meeting of the Board of Directors held March 9, 1905, as shown in said records:

"Mr. Tenney, on account of intended absence from the Islands, tendered, verbally, his resignation as President and Director of the ~~Waialua~~ Agricultural Co., Ltd., to take effect on March 10th, 1905.

"It was moved by C. H. Atherton, and seconded by W. A. Bowen, that the same be accepted.

"Carried unanimously.

"It was further moved by W. A. Bowen, and seconded by F. J. Lowery, that Mr. G. P. Castle be appointed a Director and President of the Waialua Agricultural Co., Ltd., to fill the vacancy caused by the resignation of Mr. E. D. Tenney.

"Carried unanimously.

"Mr. Tenney also tendered his resignation as a member of the special committee appointed to negotiate for and consummate the proposed lease of the Holt lands in Waialua.

(Testimony of A. A. Wilson.)

"It was moved by C. H. Atherton and seconded by F. J. Lowrey, that the same be accepted, and that Mr. W. A. Bowen be appointed a member of said committee to fill the vacancy caused by the resignation of Mr. E. D. Tenney.

"Carried unanimously."

(Signed) T. H. PETRIE

Subscribed and sworn to before me this 29th day of February, 1932.

[Seal] (Signed) JOHN F. STONE

Notary Public, First Judicial Circuit, Territory of Hawaii.)

HENRY A. WHITE

was called as a witness for Petitioner, on rebuttal, was sworn, and testified as follows:

Direct Examination.

I am the assistant treasurer of the Waialua Agricultural Company. Mr. Atherton Richards, the treasurer, is away at this time. I have prepared, at counsel for Petitioner's request, figures from the books of the company corresponding to the items marked on Exhibit S-5. For instance, in the case of the Helemano 54" siphon, the cost of which is listed on Exhibit S-5 at some \$20,000, that same siphon is now carried as a listed asset on the books of the Waialua Company at \$2,693.26. There may be some depreciation on that figure but most of it is amortization. Assets which you put on leased land

(Testimony of Henry A. White.)

carry amortization; that is to say, you are allowed to spread the cost of such assets over the period of the lease, whereas if the same asset were on fee simple land you would not be allowed to charge anything to amortization. This item was carried as an item on leased land up to 1922, and amortization was written on it up to 1922. Since 1922, depreciation has been charged.

(Counsel for Respondent objected to any further testimony being taken on the question of present value of the items or assets listed in Exhibit S-5, on the ground that matters as to amortization or depreciation are not relevant, competent or material in the case, and secondly, that such questions are not proper rebuttal. The court overruled the objection of Respondent, allowing the objection to run to all lines of such examination without renewing the objection on each question. The tabulation referred to by witness, showing the values of the items set forth in Exhibit S-5 as they were presently carried on the books of the Waialua Company, was over objection of counsel for Respondent, received in evidence and marked Petitioner's Exhibit R-8.

(Testimony of Henry A. White.)

(EXHIBIT R-8 is as follows:)

Property	Total Cost As Per Exhibit S-5	Amounts at Which Items Are Carried on Books
Buildings (including Domestic System)	\$ 57,978.04	Unascertainable
Railroads	86,880.17	Unascertainable
Reservoirs:		
Helemano 4 "A" Domestic	243.00	\$ 243.00
Helemano 3	2,299.70	699.91
Helemano 6	6,629.10	4,131.00
Helemano 6 "B"	2,494.36	1,025.30
Helemano 11	5,455.07	2,159.00
Helemano Upper	20,054.21	Unascertainable
Helemano 12	3,976.85	2,386.70
Helemano 4 "A"	2,915.30	1,569.70
Helemano 9 "C"	2,783.10	1,623.40
Helemano 15	8,259.70	6,463.70
Helemano Upper	16,025.36	9,930.30
Siphons:		
Helemano 54 Inch	20,059.06	2,693.20
Onaeula 54 Inch	5,364.60	872.60
Helemano 6	5,969.22	Unascertainable
Helemano 6 New	5,191.21	4,775.90
Helemano Reservoir 11	505.55	454.90
Ditches:		
Wahiawa Extension	5,799.16	Unascertainable
Helemano—Poamoho Branch	8,835.65	8,835.65
Helemano Upper	32,868.05	13,444.30
Helemano Lower	7,022.70	Unascertainable
Helemano Upper Reservoir Outlet	4,695.30	3,203.30
Waterways (including Lining Ditches)	29,207.73	Unascertainable

(Testimony of Henry A. White.)

Property	Total Cost As Per Exhibit S-5	Amounts at Which Items Are Carried on Books
Roads, Bridges and Fences	10,564.78	Unascertainable
Flumes	11,541.87	Unascertainable
Camp Sewerage	762.50	Unascertainable
Drainage Ditches	228.00	Unascertainable
Electric Plant	4,723.70	Unascertainable
Development of Upper Lands	3,251.75	Unascertainable
Cane Flumes	12,316.85	Unascertainable
Clearing Lands	47,483.89	Unascertainable
Telephone Lines	1,516.27	Unascertainable
Pump No. 10 (Poamoho):		
Building	900.97	755.78
Machinery, etc.	164,541.62	138,342.67
Wells	42,860.52	38,964.26
Pump No. 10 "A"—Domestic	4,700.56	4,092.49

WITNESS RESUMES: The items appearing on the list in Exhibit R-8 and marked "Unascertainable" is due to the circumstance that the various items are mingled and mixed with other items in such large totals that it is impossible to segregate the particular item on Exhibit S-5.

Cross Examination.

The differences between the columns on Exhibit S-5 and Exhibit R-8 would be accounted for both by depreciation and amortization. I think in all cases where items were constructed prior to 1922, amortization would be included. The biggest item would probably be amortization because the assets were installed in the early years and they would be

(Testimony of Henry A. White.)

amortized up to 1922. The Company carried amortization on its books for improvements installed on the Holt property prior to 1922 as a reserve. The basis of that amortization charge was to charge off over the unexpired term of the lease, the assets as installed. This practice was discontinued in 1922 so the lowering in value as shown by the Company books for the entire period up to the end of 1922 represents amortization in so far as such figures relate to assets on the Holt land. Depreciation is deducted as an expense, the same being allowable under the income tax law, and we use rates in depreciation which are currently in use for similar property elsewhere. The rate charged for depreciation has no reference whatsoever to the actual physical condition of the property. It is the practice of the Company to maintain its property in first class condition by the making of repairs. Those repairs are charged to expense. It is therefore possible to have an item of property shown on the books as having a very small value when in fact it is worth its original cost.

As to track and roadbeds, no depreciation is charged and replacements are taken care of by maintenance. This, as I understand, is the practice generally in railroad accounting. There is also no depreciation taken on ditches, fields and reservoirs.

The following then transpired:

"Mr. ULRICH: If there is no contention to be made that these properties are so large or

(Testimony of Henry A. White.)

necessary as to indicate an irreparable injury if deprived of them * * *. I offer to show that under date of December 31, 1931 there was set up on the books of the Waialua Agricultural Company as a part of the comparative balance sheet * * *.

Mr. PHLEGER: I am going to object now and I know I will have to object later to the practice of counsel reading into the record figures and data which have been excluded by the Court, obviously for the purpose of making that material in this or other courts. I think it is highly prejudicial and I think it is highly improper conduct. This petitioner can get a ruling on the offering. To drag into this case a lot of figures which counsel must know are incompetent, and possibly using them later in briefs or argument, I think it is improper. Any point counsel may have preserved by making an offer to show what the total book value of the Company actually is.

Mr. ULRICH: I think I have a right as a matter of proper trial conduct to make an offer of evidence and to have made a part of the record documents for any use that may be properly made of it. There can be no question that these figures come from the books of the Waialua Agricultural Company. I submit I have a right to have them form a part of the record in this case and to have it made a record in the

(Testimony of Henry A. White.)

case just as the fact exists, and it is not only proper but the Court cannot refuse to allow me to complete the record in this way, short of a showing of bad faith or offering to prove something which cannot be proved.

Mr. PHLEGER: I will make this prediction now. That counsel will in this Court or in another Court use that figure in his proofs. If counsel does not intend to use the figure on question of the objection as made upon the nature of the figure and not the amount, and I predict there will be offered shortly a mass of figures showing the profits of the company with no conception they will be admitted, but to get them in the record for future use in that way. I don't think any trial judge should permit in the record or questions which are obviously known to be irrelevant.

The COURT: The Court can consider the proposition very easily. I understand counsel has in his hands a document marked for identification which contains the figures counsel is attempting to refer to, and the Court can see no useful purpose to add to the transcript records figures that can't be identified for exhibits. The Court has excluded the fact itself as being immaterial to the issues, and the detail of the fact that counsel is now referring to is contained in documents marked for identification. So, if the Court is in error in excluding that material, it is all contained in identifiable documents. So

Testimony of Henry A. White.)

as to identify the particular part counsel is referring to, as far as the record is concerned, the Court will permit counsel to identify the page of the record you are referring to and the exhibits for identification number, so the data itself, if the Court has made an error, can be identified by an Appellate Court.

Mr. ULRICH: I am referring to the matter appearing on page 18 of Petitioner's exhibit R-3 for identification. I take it the Court will refuse to allow me to examine the witness on any of these items further.

The COURT: I don't see there is any relevant bearing on the properties and the further amplification of the ruling is referred to your identification as to rulings made in the former hearing along the same line.

Mr. ULRICH: I want to ask one question and take Your Honor's ruling. I think I have already read this figure.

Q. I will ask the witness if the figure, buildings, machinery, equipment, etc. of something over seven million dollars, does it or does it not represent the total original cost of that equipment, machinery, improvements, etc.?

A. I would say it did.

Q. Does the item appearing "Less reserve for depreciation of" something over three million dollars. Please answer.

(Testimony of Henry A. White.)

Mr. PHLEGER: I thought the figures were not to be read in evidence.

e COURT: The question may be stricken.

Q. Does the item underneath opposite the caption "Less reserve for depreciation" represent depreciation which has been carried on the books of the Company as against those buildings, machinery, equipment, improvements, etc.?

Mr. PHLEGER: The objection as I previously made, runs to this whole line, and I need not renew it?

The COURT: You do not need to renew it, but the Court has the idea the objection applies to this specific question. The Court is not particularly interested in it. The objection will be sustained as to the question."

Counsel for Petitioner then offered in evidence a list of figures representing statements of the net profits of Waialua from sugar and molasses for the period from 1908 to 1931 inclusive, objection to which by Waialua being sustained, Petitioner then offered to prove the fact of such profits, which being objected to by Waialua, the Court sustained said objection upon the ground, among others, that the Waialua Company had made no defense in the case that the use of these lands for sugar purposes was unprofitable. The Court refused to permit Petitioner to read the figures referred to into the record, but permitted Petitioner to introduce for identifica-

Testimony of Henry A. White.)
on two typewritten sheets setting forth, first, the net profits realized by Waialua for the period referred to before deducting income taxes and special charges and losses, and, second, a sheet showing those same net profits corrected by the deduction of such taxes and special charges and losses. These sheets were by order of the Court enclosed in an envelope marked "Sheets 1 and 2" the envelope being sealed and marked "Petitioner's Exhibit R-9" for identification. It was then ruled by the Court that the envelope contained information which Petitioner offered to identify and prove in connection with her offer to introduce the said profits of the Company in evidence.

The Court further ruled that said envelope should not be opened save by order of the Court. The original envelope, Exhibit R-9 for identification, together with its contents, is by order of the Supreme Court made a part hereof and is hereby referred to and incorporated herein.

Petitioner thereupon rested.

"Mr. PHLEGER: We rest with one exception. We would like to call upon counsel for Petitioner to produce in writing the document purporting to be a transfer by John Dominis Holt to Ann Kentwell of any interest in John D. Holt's stipend, so-called, arising out of his agreement with James L. Holt or John L. Holt.

Mr. ULRICH: I can respond to that by saying we have no such document and are unable to produce it.

(Testimony of Henry A. White.)

Mr. PHLEGER: And know of no such document?

Mr. ULRICH: I know of no such document."

Respondent thereupon rested.

ORDER

The foregoing Condensed Statement of Evidence having been duly lodged in the office of the clerk of this court by both appellants herein, and respective counsel having been heard in the premises and the Court having made its rulings thereon, the same is in all respects hereby approved and settled as a true and complete statement of the evidence adduced on the trial of the above entitled action to be included in the record on appeal in the above entitled cause, and a verbatim reproduction of portions of the evidence included in the foregoing statement being necessary to a proper determination of said cause on appeal, IT IS FURTHER ORDERED that the testimony hereinabove set forth verbatim shall be so reproduced in making up said record on appeal, all as provided by paragraph "b" of Equity Rule 75.

It further appearing to the Court that it is proper and necessary that certain original exhibits, hereinafter listed, and referred to in said Condensed Statement of Evidence, and incorporated therein by reference, should be inspected by the United States

Circuit Court of Appeals for the Ninth Circuit in their original form, **IT IS HEREBY FURTHER ORDERED** that said exhibits be transmitted by the clerk to said Court in original form in connection with and as a part of said Condensed Statement of Evidence and Transcript, and that a photostat copy of the signatures appearing on Exhibit A-21, and reduced reproductions of maps Exhibits C, S-3 and S-4 likewise be included in the printed Condensed Statement of Evidence, such exhibits being as follows:

Petitioner's Exhibit C, being map;

Petitioner's Exhibits D-10, D-11, D-13, D-15, D-16, D-19, D-21, D-22, D-25, D-28, D-29, D-30, D-32, and D-37;

Petitioner's Exhibit A-21;

Petitioner's Exhibits 1 and 2 in connection with the deposition of Dr. Thomas Saxty Good;

Petitioner's Exhibit, being book or pamphlet entitled: "Scale of Tests," accompanying deposition of Dr. Thomas Saxty Good;

Two undated slips on paper of Canadian Bank of Commerce, London, in connection with Exhibit D-35;

Respondent's Exhibits 15-A and 15-B, being powers of attorney;

Respondent's Exhibit 6-A;

Respondent's Exhibits 2, 3, 4, 5 and 6, for identification, attached to deposition of Dr. Masson, and contained in sealed envelope;

1578

Eliza R. P. Christian vs.

Respondent's Exhibit S-3, being map;
Respondent's Exhibit S-4, being map;
Petitioner's Exhibit R-9, for identification, being
sealed envelope;

Respondent's Exhibit S-9, being book of photographs.

Dated: Honolulu, T. H., July 24, 1936.

JAS. J. BANKS

Associate Justice

E. C. PETERS

Associate Justice

CMH

ALC

D. E. METZGER

Associate Justice

Supreme Court of the Territory
of Hawaii.

the Grantee his heirs and assigns to him and their heirs and assigns for ever.

The said Grantors for themselves their heirs executors and administrators covenant with the said Grantee his heirs executors administrators and assigns that they have good title in and to the described premises that they have good right to convey the same that the same are free from incumbrances except as aforesaid and that they will warrant and defend the same against the claims and demands of all persons except as aforesaid and that they and their heirs executors and administrators will on demand of said Grantee his heirs executors administrators or assigns execute to him or them such instruments or instrument as may be necessary or by him or them deemed advisable at any time to perfect the title in the Grantee his heirs executors administrators and assigns in and to that portion of the estate of R. W. Holt devised by his Will to John Dominus Holt and at his death to his heirs and assigns.

IN WITNESS whereof the Grantors have set their hands and seals this second day of May One thousand nine hundred and ten, the said Albert Christian Husband of said Eliza R.P. Christian joining in consent hereto by a separate instrument executed within said Territory of Hawaii.

Witness
John D. [unclear]

John D. [unclear]

claims and demands of all persons except as aforesaid and that they and their heirs executors and administrators will on demand of said Grantee his heirs executors administrators or assigns execute to him or them such instruments or instrument as may be necessary or by him or them deemed advisable at any time to perfect the title in the Grantee his heirs executors administrators and assigns in and to that portion of the estate of R. W. Holt devised by his Will to John Dominus Holt and at his death to his heirs and assigns.

IN WITNESS whereof the Grantors have set their hands and seals this second day of May One thousand nine hundred and ten, the said Albert Christian Husband of said Eliza R.P. Christian joining in consent hereto by a separate instrument executed within said Territory of Hawaii.

Witness
Wm. L. Wiltinger

John D. B. B.

Eliza A. P. Christian

James B. Kentrell

Albert Christian

Lawrence Kentrell

Witness to signature of
Albert Christian
Wm. L. Wiltinger
Robert L. Colburn

[Endorsed]: No. 8329. United States Circuit Court of Appeals for the Ninth Circuit. Eliza R. P. Christian, an incompetent person, by Herman V. Von Holt, her guardian, Appellant, vs. Waialua Agricultural Company, Limited an Hawaiian corporation, James L. Holt, and Annie Holt Kentwell, Appellees. Waialua Agricultural Company, Limited a Hawaiian corporation, Cross-Appellant, vs. Eliza R. P. Christian, an Incompetent person, by Herman V. Von Holt, her guardian, James L. Holt and Annie Holt Kentwell, Cross-Appellees. Transcript of Record, in three volumes. Upon Appeal and Cross-Appeal from the Supreme Court of the Territory of Hawaii.

Filed: September 11, 1936.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.